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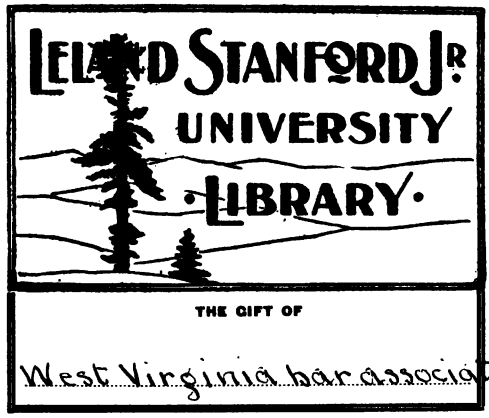
# WEST VA. BAR ASSOCIATION

## TWENTY FIRST ANNUAL MEETING

DEC. 28 AND 29, 1905.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# PROCEEDINGS

OF THE

## Twenty-first Annual Meeting

OF

# THE WEST VIRGINIA BAR ASSOCIATION

HELD AT

## Fairmont, West Virginia

ON

December 28th and 29th, 1905

---

Edited for the Executive Council

BY

W. G. PETERKIN, Secretary.

---

Parkersburg, W. Va.
THE STATE JOURNAL COMPANY
1906.

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LAW DEPARTMENT.

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# OFFICERS AND COMMITTEES

1906.

---

**President,**
**JOHN W. DAVIS,**
**Clarksburg.**

**Vice Presidents,**
**First District:—M. F. Snider,** Clarksburg.
**Second District:—William MacDonald,** Keyser.
**Third District:—E. W. Knight,** Charleston.
**Fourth District:—Hunter H. Moss, Jr.,** Parkersburg.
**Fifth District:—Wells Goodykoontz,** Williamson.

**Secretary,**
**WM. G. PETERKIN,**
**Parkersburg.**

**Treasurer,**
**W. N. MILLER,**
**Parkersburg.**

**Executive Council.**
W. P. WILLEY, Morgantown
B. M. AMBLER, Parkersburg.
H. M. RUSSELL, Wheeling.
ELLIOTT NORTHCOTT, Huntington.
E. L. NUCKOLLS, Fayetteville.
JOHN W. DAVIS, (Ex-of.) Clarksburg.
WM. G. PETERKIN, (Ex-of.) Parkersburg.

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**STANDING COMMITTEES.**

**Committee On Admissions.**
E. D. TALBOTT, Elkins.
J. M. WOODS, Martinsburg.
G. W. McCLINTIC, Charleston.
A. L. LEHMAN, Fairmont.
FRANK W. NESBITT, Wheeling.

**Committee On Judicial Administration and Legal Reform.**
B. M. AMBLER, Parkersburg.
A. M. POUNDSTONE, Buckhannon.
JOHN W. MASON, Fairmont.
T. S. RILEY, Wheeling.
JOHN BASSEL, Clarksburg.

**Committee On Legal Education.**
ST. GEORGE TUCKER BROOKE, Morgantown.
C. W. DAILEY, Elkins.
B. L. BUTCHER, Fairmont.
JAS. W. EWING, Wheeling.
IRA E. ROBINSON, Grafton.

**Committee On Legal Biography.**
ROBERT WHITE, Wheeling.
W. MOLLOHAN, Charleston.
M. H. DENT, Grafton.
T. L. HENRITZE, Welch.
P. J. CROGAN, Kingwood.

**Committee On Grievances.**
THOS. P. JACOBS, New Martinsville.
JOHN J. CONIFF, Wheeling.
W. G. BENNETT, Weston.
J. W. VANDERVORT, Parkersburg.
S. V. WOODS, Philippi.

**Committee On Legislation.**
GEO. E. PRICE, Charleston.
W. P. HUBBARD, Wheeling.
MASON G. AMBLER, Parkersburg.
CHAS. McCAMIC, Moundsville.
W. W. BRANNON, Weston.

**Committee On Banquet.**
C. W. DAILEY, Elkins.
J. F. STRADER, Beverly.
JARED L. WAMSLEY, Elkins.
E. A. BOWERS, Elkins.
W. G. WILSON, Elkins.

## SPECIAL COMMITTEES.

**Committee On Torrens Land System.**
W. P. WILLEY, Morgantown.
THOS. P. JACOBS, New Martinsville.
EDGAR B. Stewart, Morgantown.
C. D. MERRICK, Parkersburg.
L. J. WILLIAMS, Lewisburg.
JAS. F. BROWN, Charleston.

**Committee On Uniformity Of Legislation.**
W. W. VAN WINKLE, Parkersburg.

**Delegates To American Bar Association.**
H. C. HERVEY, Wellsburg.
L. J. WILLIAMS, Lewisburg.
ROBERT W. DAILEY, Romney.

**Former Presidents Of the West Virginia Bar Association:**

JOSEPH SPRIGG,
J. J. JACOB,
B. M. AMBLER,
E. B. KNIGHT,
H. M. RUSSELL,
W. P. WILLEY,
OKEY JOHNSON,
J. D. EWING,
T. P. JACOBS,
W. P. HUBBARD,
F. W. BROWN,
P. J. CROGAN,
D. C. WESTENHAVER,
W. MOLLOHAN,
L. J. WILLIAMS,
JOHN BASSEL,
GEO. E. PRICE,
C. WOOD DAILEY,
W. W. BRANNON,
JOHN W. MASON.

## List Of Members In Attendance

### Fairmont, 1905.

Mason G. Ambler,
G. M. Alexander,
E. A. Bowers,
John Bassel,
Wm. G. Brown, Jr.,
Frank Cox,
Geo. P. Chase,
W. H. Conaway,
A. J. Clarke,
John W. Davis,
John J. Davis,
D. B. Evans,
G. M. Fleming,
J. C. Frazer,
S. F. Glasscock,
T. B. Horan,
W. W. Hughes,
John Homer Holt,
Leroy V. Halsberry,
C. C. Higginbotham,
Thos. P. Jacobs,
J. P. Kirby,
John L. Lehman,
Scott C. Lowe,
J. A. Meredith,
Wm. B. Mathews,
F. T. Martin,
W. C. Mann,
Frank C. McMahon,
Geo. W. McClintic,
Chas. McCamic,
Frank W. Nesbitt
Geo. E. Price,
Chas. Powell,
Andrew Price,
T. S. Riley,
E. M. Showalter,
W. W. Smith,
Geo. P. Shirley,
H. C. Showalter,
Clarence Sperry,
Terrence D. Stewart,
H. C. Thurmond,
A. Jay Valantine,
J. W. Vandervort,
Jared L. Wamsley,
W. P. Willey,

U. N. Arnett, Jr.,
W. W. Brannon,
St. Geo. T. Brooke,
W. G. Bennett,
Geo. C. Baker,
W. B. Cornwell,
John J. Coniff,
T. C. Cornett,
John J. Cornwell,
H. C. Deshields,
Andrew Edmiston,
A. S. Fleming,
R. F. Fleming,
W. T. George,
C. W. Gore,
Nelson C. Hubbard,
Harvey W. Harmer,
S. M. Hoff,
J. M. Hoover,
John T. Harris,
Tracy L. Jeffords,
Ben D. Koontz,
A. L. Lehman,
I. G. Lazelle,
John W. Mason,
W. S. Meredith,
C. M. Murphy
Wm. MacDonald,
J. M. McClintic,
John T. McGraw,
M. M. Neely,
E. L. Nuckolls,
W. G. Peterkin,
Melville Peck,
Ira E. Robinson,
H. M. Russell,
Harry Shaw,
Joseph Sprigg,
Harry Scherr,
J. C. Simpson,
M. G. Sperry,
Chas. P. Swint,
C. F. Teter,
J. A. A. Vandale,
M. H. Willis,
H. B. Woods,
H. W. Williams,

B. S. Allison,
Linn Brannon,
B. L. Butcher,
H. H. Byrer,
Jas. G. Bunting.
A. M. Cunningham,
P. J. Crogan,
C. E. Carrigan,
W. M. O. Dawson,
A. G. Dayton,
Jas. W. Ewing,
Jake Fisher,
A. B. Fleming,
W. E. Glasscock,
H. T. Houston,
W. P. Hubbard,
John Henshaw,
E. F. Hartley,
Geo. N. Hoffheimer,
F. V. Iams,
U. S. Kendall,
H. S. Lively,
L. M. LaFollette,
W. N. Miller,
Hunter H. Moss, Jr.,
Edwin Maxey,
Tusca Morris,
E. M. McPeak,
G. W. McCauley,
J. C. McWhorter,
Elliott Northcott,
M. W. Ogden,
Thos. N. Parks,
A. M. Poundstone,
Roy Reger,
B. F. Ramage,
Harvey F. Smith,
M. F. Snider,
W. Frank Stout,
C. A. Showacre,
J. H. Strickling,
Leroy Taylor,
Blaine W. Taylor,
C. A. Vincent,
J. Hop. Woods,
R. A. Watts,
F. R. Yoke.

# TWENTY-FIRST ANNUAL MEETING

—OF—

# THE WEST VIRGINIA BAR ASSOCIATION

## HELD AT FAIRMONT

**December 28th and 29th, 1905.**

(Stenographically reported by John T. Harris, of Parkersburg.)

---

### FIRST DAY: MORNING SESSION.

The Association met on Thursday, December 28th, at 10 o'clock a. m., in the Circuit Court room.

**President Mason**: The Association will please come to order. I am informed that the first item of business as formulated by the Executive Council is what is known as the annual address of the President.

(The President here delivered his address on the subject of "The Election Laws of our State." See Appendix.)

**President Mason**: Gentlemen, the next order of business is the discussion of the President's address. I shall be very glad to hear any remarks that the gentlemen of the Association may choose to make.

**Judge T. P. Jacobs**: Mr. President: It seems to me that so interesting and important an address as we have listened to, ought not to pass without some notice being taken of it. I have therefore prepared a resolution which contains an idea which I have entertained for a good many years, and this seems to be an opportune moment to present that resolution, and possibly it will lead to a discussion of the President's address. I will read the resolution because I am satisfied neither the Secretary nor the Stenographer can read it:

"RESOLVED, that it is the opinion of this Association that a general national naturalization law should be enacted by Congress, conferring upon the Federal courts exclusive power and authority to admit to citizenship, permitting the applicant, however, to make his declaration of intent to become a citizen in any court of record, but allowing no court except the Federal court to admit to citizenship by

naturalization, thus establishing a uniform system throughout the Union.''

Mr. President, I move the adoption of that resolution.

**President Mason**: Gentlemen, you have heard the resolution. What action does the Association desire to take upon it? Are there any remarks?

**Mr. George E. Price**: Mr. President, I move that the resolution be referred to the Committee on Judicial Administration and Legal Reform, for consideration, and with instructions to report at this meeting. I think it is a subject that is too broad to act upon in haste. Whilst I am on my feet, sir, there is just one topic that was discussed in the President's address that I wish to speak of, and that is the provision of the present act, passed, I believe, at the last session of the Legislature, providing for the punishment of the bribe-taker but providing no punishment for the bribe-giver. I am inclined very strongly to differ with the President in the position he takes upon the question. We have had always, I believe, prior to the passage of the present statute, just the kind of a law that the President has advocated—punishment for the bribe-giver and the bribe-taker—and it has been thoroughly ineffective—ineffective for the very reason that both parties may be punished. The idea, I think, of those who originated the present law, was, not that the bribe-giver is not as guilty, and perhaps more guilty than the other man, but that the law will be more effective if you attempt to punish one rather than both. If you disfranchise the man who sells his vote, the likelihood is if that law is enforced with any vigor at all there will be few votes sold. If there are no votes to sell they cannot be bought, and you will have accomplished the purpose—the ultimate purpose—which is not the punishment of crime but the purification of elections; and if you leave the law as it stood before, you can never get one of the parties to the transaction who will testify, because if he testifies he incriminates himself, and renders himself liable to punishment. The consequence is that evidence is not obtainable from any of the parties or any body who participated in, or assisted or aided in any way in the bribery; but if it is known that a man is going out to bribe voters possibly for the purpose of disfranchising those that sell—that that is the method of catching the criminal or detecting him and furnishing the evidence—it ought to have the effect that was intended.

I am very much in favor, Mr. President, of giving the present law a fair trial and if the prosecuting attorneys will do as the President indicated they should be instructed to do—report and prosecute all violations of the law—I am satisfied we will have reform in that direction. I am afraid there is the evil. The prosecuting attorney very often in our experience has been a party to the bribery. He may have won out or been elected by that means and he is rarely free from the corrupting influences of our present system. I think the prosecuting attorney ought to be appointed by the judge of the court

and when we come to that system we will have a more effectual execution of the criminal law.

**Mr. Harvey F. Smith**: While this very practical and very important subject is being discussed, and through it the resolution offered by Judge Jacobs, I would like to ask him to state what the objections are, if any, to State judges passing upon this question of naturalization? And while I am on my feet I would like to ask at the hands of the distinguished and experienced men who are here and who are sufficiently free from practical politics to discuss the question freely, to what extent a man who cannot read and write ought to be allowed to vote? What qualification has the man who cannot read and write to grasp the elements of citizenship to the extent that he can cast an intelligent vote?

**President Mason**: If there are no other remarks, gentlemen, the vote will be upon the motion of the gentleman from Kanawha to refer the resolution offered by Judge Jacobs to the Committee on Judicial Administration and Legal Reform, with the understanding that the committee shall report at this meeting of the Association.

The question being propounded by the Chair the motion was carried.

**Secretary Peterkin**: Mr. Ambler, the chairman of that committee has not arrived yet. In looking around I see that Mr. W. P. Hubbard is the only member of the committee present and I will hand the resolution to him.

**President Mason**: Is there to be any further discussion, gentlemen, of the President's address? If not, the next order of business is the report of the Committee on Admissions. The chairman of that committee—Mr. Lehman—I believe is present.

**Mr. A. L. Lehman**: I do not see any other members of the committee present, and as several applications have just been handed me, I would like to beg a little further time in which to make the report. If I can have until after the noon hour I can prepare the report and submit it the first thing after dinner.

**President Mason**: If there is no objection that will be done. The next order would be the election of members which would follow, of course, the report of the Committee on Admissions. The next order of business is the appointment of the Committee on Nominations. How is that committee appointed, Mr. Secretary?

**Secretary Peterkin**: The President appoints it.

**President Mason**: I will announce that committee then, gentlemen, immediately after the adjournment hour. Next is the report of the Secretary.

The Secretary, Mr. W. G. Peterkin, here presented his report, as follows:

## Report Of Secretary.

West Va. Bar Association, 1905.

The Secretary has only to report the usual routine work of the office.

It would be well however to call attention to the fact that, in making up the roll of members for inclusion in the printed report of the last meeting, the names of all those were omitted who were reported at that meeting by the Treasurer as being in arrears for dues for two years or more:—such of these as have paid their arrears during the year are entitled to re-instatement under Art. 22 of the Constitution and should be included in the next membership roll.

It should also be noted that the list of members was printed in the report of the last meeting both alphabetically and by counties, as suggested in the report of the Secretary last year, a plan which it is believed it would be well to follow as affording a convenient and useful reference.

The Secretary had great cause to regret the long delay in getting out the last report—one fortuitous circumstance after another delayed the publishers in their work, and the Secretary hopes that his successor will not be so troubled and will be able to furnish each member of the Association with a copy of the report of this meeting at a date several months earlier than was done this year.

The Secretary would suggest that the next report include an index of the papers and addresses which have been from time to time read and delivered before the Association, as well as a Directory of the Local Bar Associations in the State.

Respectfully submitted,

W. G. PETERKIN,
Secretary.

**President Mason**: You have heard the report of the Secretary. What action will you take upon it? The report will be received and filed. Next in order is the report of the Treasurer.

The Treasurer, Mr. W. N. Miller, here presented his report, as follows:

## Report Of the Treasurer.

To the West Virginia Bar Association:

Gentlemen: I submit to you herewith an itemized statement of the receipts and disbursements of the Treasurer for the past year. The net balance from 1904 was $2,017.89. The receipts since the last report of the Treasurer have been $1,336.00, making a total of $3,-353.89. The disbursements have been $1,299.12, leaving a balance of $2,054.77 in the Treasury, an increase of $36.88 in the balance over last year. Vouchers are submitted herewith.

Of the amount of annual dues collected and included in the receipts of the last year the Treasurer has set apart one-fourth, amounting to $272.00, and carried the same to the credit of The Bar. The

report last year showed a balanace against The Bar in this account of $245.95. The disbursements of the past year on account of The Bar aggregate $412.00. The disbursements of the past year added to the balance against The Bar from the year 1904 exceed the receipts by the sum of $385.95.

I also submit herewith a report of those delinquent in the payment of dues for a period of two years and upward showing an amount due the Association aggregating $783.50. In addition to these delinquencies there are other delinquencies not coming under the purview of Article 22 of the Constitution amounting to $142, aggregating in all $925.50 owing to the Association.

Respectfully submitted,

W. N. MILLER,
Treasurer.

**Receipts Account Dues.**

| | | | |
|---|---|---|---|
| 1905. | | | |
| Jan. | 1 | To balance from 1904 ..... | $2263.84 |
| | 1 | E. H. Morton, 1903-1904..... | 6.00 |
| | 1 | Tracy L. Jeffords ..... | 3.00 |
| | 1 | H. M. Anderson, In. fee, ..... | 5.00 |
| | 1 | L. C. Anderson, In. fee, ..... | 5 00 |
| | 1 | R. M. Baker, In fee. ..... | 5.00 |
| | 1 | V. L. Black, In. fee, ..... | 5.00 |
| | 1 | Robt. L. Bland, In fee, ..... | 5.00 |
| | 1 | J. G. Bunting, In. fee,..... | 5.00 |
| | 1 | Murray Briggs, In. fee,..... | 5.00 |
| | 1 | H. S. Cato, In. fee, ..... | 5.00 |
| | 1 | Buckner Clay, In. fee,..... | 5.00 |
| | 1 | R. F. Dunlop, In. fee,..... | 5.00 |
| | 1 | A. D. Dailey, In. fee,..... | 5.00 |
| | 1 | R. P. Fluornoy, In. fee,..... | 5.00 |
| | 1 | Wells Goodykoontz, In fee..... | 5.00 |
| | 1 | A. W. Hamilton, In. fee,..... | 5.00 |
| | 1 | John M. Hoover, In. fee,..... | 5.00 |
| | 1 | A. J. Horan, In. fee,..... | 5.00 |
| | 1 | T. O. Horan, In. fee,..... | 5.00 |
| | 1 | T. B. Horan, In. fee,..... | 5.00 |
| | 1 | Robert T. Hubard, Jr., In. fee,..... | 5.00 |
| | 1 | R. G. Linn, In. fee,..... | 5.00 |
| | 1 | Leo Loeb, In. fee, ..... | 5.00 |
| | 1 | Dan Matthews, In. fee, ..... | 5.00 |
| | 1 | Angus W. McDonald, In. fee,..... | 5.00 |
| | 1 | Duncan McRa, In. fee,..... | 5.00 |
| | 1 | Elliott Northcott, In. fee, ..... | 5.00 |
| | 1 | L. E. Poteet, In. fee,..... | 5.00 |
| | 1 | Andrew Price, In. fee,..... | 5.00 |

1905

| | | | |
|---|---|---|---|
| Jan. | 1 | H. A. Ritz, In. fee,..... | 5.00 |
| | 1 | J. M. Saunders, In. fee,..... | 5.00 |
| | 1 | Geo. H. Shrewsbury, In. fee,..... | 5.00 |
| | 1 | Clarence B. Sperry, In. fee,..... | 5.00 |
| | 1 | R. S. Spilman, In fee..... | 5.00 |
| | 1 | Terrence D. Stewart, In fee,..... | 5.00 |
| | 1 | J. B. White, In. fee,..... | 5.00 |
| | 1 | John L. Whitten, In. fee,..... | 5.00 |
| | 1 | C. A. Kreps, In. fee,..... | 5.00 |
| | 1 | C. C. Watts, 1904..... | 3.00 |
| | 1 | Millard F. Snyder, 1905,..... | 3.00 |
| | 1 | C. M. Alderson, 1905,..... | 3.00 |
| | 1 | M. G. Sperry, 1905,..... | 3.00 |
| | 1 | Grant P. Hall, 1905,..... | 3.00 |
| | 1 | Harvey W. Harmer, 1905,..... | 3.00 |
| | 1 | A. L. Lehman, 1905,..... | 3.00 |
| | 1 | John L. Lehman, 1905,..... | 3.00 |
| | 1 | John P. Arbenz, 1905,..... | 3.00 |
| | 1 | Walter Pendleton, 1905,..... | 3.00 |
| | 1 | J. C. Simpson, 1905,..... | 3.00 |
| | 1 | N. C. Hubbard, 1905,..... | 3.00 |
| | 1 | H. B. Buster, 1905, In. fee,..... | 5.00 |
| | 1 | H. B. Davenport, In. fee,..... | 5.00 |
| | 1 | George C. Baker, 1904 & prev.,..... | 23.00 |
| | 12 | W. B. Mathews, 1905,..... | 3.00 |
| | 12 | A. C. McIntire, In. fee,..... | 5.00 |
| | 12 | Jno. A. Campbell, 1904 & prev.,..... | 9.00 |
| Sep. | 2 | J. Hop Woods, 1905,..... | 3.00 |
| | 6 | Chas. J. Faulkner, 1905,..... | 3.00 |
| | 8 | J. T. Hoke, 1905,..... | 3.00 |
| | 14 | Mason G. Ambler, 1905,..... | 3.00 |
| | 14 | W. W. Van Winkle, 1905,..... | 3.00 |
| | 14 | B. M. Ambler, 1905,..... | 3.00 |
| | 14 | C. D. Merrick, 1905,..... | 3.00 |
| | 14 | A. D. Ireland, 1905,..... | 3.00 |
| | 14 | W. G. Peterkin, 1905,..... | 3.00 |
| | 14 | Dan. B. Leonard, 1905,..... | 3.00 |
| | 14 | Geo. W. Johnson, 1905,..... | 3.00 |
| | 14 | Levin Smith, 1905,..... | 3.00 |
| | 14 | Romeo H. Freer, 1905,..... | 3.00 |
| | 15 | James L. Hamill, 1905,..... | 3.00 |
| | 16 | John Bassel, 1905,..... | 3.00 |
| | 16 | W. R. D. Dent, 1905,..... | 3.00 |
| | 16 | A. W. Burdette, 1905,..... | 3.00 |
| | 16 | G. H. A. Kunst, 1905,..... | 3.00 |

1905

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|---|---|---|
| Sept. 16 | Jackson V. Blair, 1905,..... | 3.00 |
| 16 | M. H. Willis, 1905,..... | 3.00 |
| 16 | H. H. Moss, Jr., 1905,..... | 3.00 |
| 16 | A. G. Patton, 1904-1905,..... | 6.00 |
| 16 | C. C. Higginbotham, 1905,..... | 3.00 |
| 18 | C. L. Brown, 1905,..... | 3.00 |
| 18 | N. C. Prickett, 1905,..... | 3.00 |
| 18 | F. L. Blackmar, 1905,..... | 3.00 |
| 18 | Ross Wells, 1905,..... | 3.00 |
| 18 | J. F. Barron, 1905,..... | 3.00 |
| 18 | J. T. McGraw, 1905,..... | 3.00 |
| 18 | Haymond Maxwell, 1905,..... | 3.00 |
| 18 | Felix C. Pifer, 1905,..... | 3.00 |
| 18 | A. M. Poundstone, 1905,..... | 3.00 |
| 18 | G. W. Fleming, 1905,..... | 3.00 |
| 18 | H. C. Simms, 1905,..... | 3.00 |
| 18 | E. S. Doolittle, 1905,..... | 3.00 |
| 18 | T. B. Enslow, 1905,..... | 3.00 |
| 19 | J. S. Spencer, 1905,..... | 3.00 |
| 19 | B. F. Bailey, 1904, 1905,..... | 6.00 |
| 19 | Claude W. Gore, 1905,..... | 3.00 |
| 19 | H. W. Williams, 1905,..... | 3.00 |
| 19 | W. P. Hubbard, 1905,..... | 3.00 |
| 19 | H. M. Russell, 1905,..... | 3.00 |
| 19 | J. B. Sumerville, 1905,..... | 3.00 |
| 19 | John A. Howard, 1905,..... | 3.00 |
| 19 | B. S. Allison, 1905,..... | 3.00 |
| 19 | G. R. C. Allen, 1905,..... | 3.00 |
| 19 | S. G. Smith, 1905,..... | 3.00 |
| 19 | C. P. Flick, 1905,..... | 3.00 |
| 19 | James W. Ewing, 1905,..... | 3.00 |
| 19 | H. C. Richards ..... | 3.00 |
| 19 | Joseph R. Naylor, 1905,..... | 3.00 |
| 19 | Frank C. Cox, 1905,..... | 3.00 |
| 19 | R. M. Addleman, 1905,..... | 3.00 |
| 19 | Frank A. McMahon, 1905,..... | 3.00 |
| 19 | A. J. Clarke, 1905,..... | 3.00 |
| 19 | L. F. Stifel, 1905,..... | 3.00 |
| 19 | W. C. Meyer, 1905,..... | 3.00 |
| 19 | Geo. B. Caldwell, 1905,..... | 3.00 |
| 20 | W. E. Haymond, 1905,..... | 3.00 |
| 20 | Thos. L. Brown, 1905,..... | 3.00 |
| 20 | W. Mollohan, 1905,..... | 3.00 |
| 20 | Geo. W. McClintock, 1905,..... | 3.00 |
| 20 | W. G. Mathews, 1905,..... | 3.00 |

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| | | |
|---|---|---|
| Sept. 20 | M. H. Dent, 1905,..... | 3.00 |
| 20 | Clarence E. Martin, 1905,..... | 3.00 |
| 20 | J. M. Woods, 1905,..... | 3.00 |
| 20 | W. C. Kilmer, 1905,..... | 3.00 |
| 20 | D. C. Westenhaver, 1905,..... | 3.00 |
| 20 | A. C. Nadenbousch, 1905,..... | 3.00 |
| 20 | Allen B. Noll, 1905,..... | 3.00 |
| 20 | E. Boyd Faulkner, 1905,..... | 3.00 |
| 20 | Stuart W. Walker, 1905,..... | 3.00 |
| 20 | W. C. Mann, 1905,..... | 3.00 |
| 20 | D. B. Evans, 1905,..... | 3.00 |
| 20 | A. L. Hooten, 1905,..... | 3.00 |
| 20 | Thomas H. Cornett, 1905,..... | 3.00 |
| 20 | S. B. Hall, 1905,..... | 3.00 |
| 21 | Geo. W. Atkinson, 1905,..... | 3.00 |
| 21 | Thayer Melvin, 1905,..... | 3.00 |
| 21 | Ferdinand Wingerter, 1905,..... | 3.00 |
| 21 | A. G. Fickieson, 1905,..... | 3.00 |
| 21 | Robert White, 1905,..... | 3.00 |
| 21 | Geo. E. Boyd, 1905,..... | 3.00 |
| 21 | Wm. H. Hearne, 1905,..... | 3.00 |
| 21 | Henry K. Drane, 1905 & prev.,..... | 8.00 |
| 21 | Ira E. Robinson, 1905,..... | 3.00 |
| 21 | W. Dallas Payne, 1905,..... | 3.00 |
| 21 | S. B. Avis, 1905,..... | 3.00 |
| 22 | James S. McCluer, 1905,..... | 3.00 |
| 22 | John W. Davis, 1905,..... | 3.00 |
| 22 | John W. Mason, 1905,..... | 3.00 |
| 22 | B. F. Meighen, 1905,..... | 3.00 |
| 22 | Basil T. Bower, 1905,..... | 3.00 |
| 22 | Wm. G. Conley, 1905,..... | 3.00 |
| 22 | P. P. Crogan, 1905,..... | 3.00 |
| 22 | A. Bliss McCrum, 1905,..... | 3.00 |
| 22 | W. G. Brown, 1905,..... | 3.00 |
| 22 | E. D. Talbott, 1905,..... | 3.00 |
| 23 | R. A. Quarrier, 1905,..... | 3.00 |
| 23 | A. D. Preston, 1905,..... | 3.00 |
| 23 | H. L. Van Sickles, 1905,..... | 3.00 |
| 23 | Chas. S. Dice, 1905,..... | 3.00 |
| 23 | John A. Preston, 1905,..... | 3.00 |
| 23 | J. M. McWhorter, 1905,..... | 3.00 |
| 25 | Angus W. McDonald, 1905,..... | 3.00 |
| 25 | Forrest W. Brown, 1905,..... | 3.00 |
| 25 | J. M. Hamilton, 1905,..... | 3.00 |
| 25 | E. L. Robinson, 1905-1904,..... | 6.00 |

1905

| | | |
|---|---|---|
| Sept. 25 | B. L. Butcher, 1905, | 3.00 |
| 25 | T. P. Jacobs, 1905, | 3.00 |
| 25 | W. M. O. Dawson, 1905, | 3.00 |
| 25 | B. F. Kellar, 1905, | 3.00 |
| 25 | L. M. McClintick, 1905, | 3.00 |
| 25 | F. C. Leftwich, 1905, | 3.00 |
| 25 | J. F. Brown, 1905, | 3.00 |
| 25 | John Wehrle, 1905, | 3.00 |
| 25 | Malcolm Jackson, 1905, | 3.00 |
| 25 | E. W. Knight, 1905, | 3.00 |
| 25 | M. S. Hodges, 1905, | 3.00 |
| 25 | C. W. Dillon, 1905, | 3.00 |
| 27 | W. W. Jackson, 1905, | 3.00 |
| 27 | J. Howard Holt, 1905, | 3.00 |
| 27 | Wm. G. Caldwell, 1905 & prev., | 11.00 |
| 27 | Alfred Caldwell, 1905, | 3.00 |
| 27 | A. Jay Valentine, 1905, | 3.00 |
| 27 | C. O. Streiby, 1905, | 3.00 |
| 27 | Benj. Dailey, 1905, | 3.00 |
| 28 | John J. Coniff, 1905, | 3.00 |
| 28 | Braxton D. Gibson, 1905, | 3.00 |
| 28 | E. M. Showalter, 1905, | 3.00 |
| 28 | O. J. Chambers, 1905, | 3.00 |
| 28 | L. M. LaFollette, 1905, | 3.00 |
| 29 | Wm. McG. Hall, 1905, | 3.00 |
| 29 | Wm. P. Willey, 1905, | 3.00 |
| 29 | Joseph Moreland, 1905, | 3.00 |
| 29 | St. George T. Brooke, 1905, | 3.00 |
| 29 | D. C. Reay, 1905, | 3.00 |
| 29 | Geo. C. Baker, 1905, | 3.00 |
| 29 | Edgar B. Stewart, 1905, | 3.00 |
| 29 | S. F. Glasscock, 1905, | 3.00 |
| 29 | James C. Frazer, 1905, | 3.00 |
| 29 | Wm. E. Glasscock, 1905 & prev., | 8.00 |
| 29 | C. W. Cramer, 1905, | 3.00 |
| 29 | T. O. Bullock, 1905, | 3.00 |
| 30 | L. J. Williams, 1905, | 3.00 |
| 30 | E. L. Nuckols, 1905, | 3.00 |
| Oct. 2 | H. B. Gilkeson, 1905, | 3.00 |
| 2 | R. W. Dailey, 1905, | 3.00 |
| 2 | W. B. Cornwell, 1905, | 3.00 |
| 2 | E. M. McPeak, 1905, | 3.00 |
| 2 | John J. Cornwell, 1905, | 3.00 |
| 2 | C. W. Osenton, 1905, | 3.00 |
| 2 | F. M. Reynolds, 1905, | 3.00 |

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|---|---|---|---|
| Oct. | 2 | Wm. McDonald, 1905, | 3.00 |
| | 2 | W. C. Clayton, 1905, | 3.00 |
| | 2 | J. F. Strader, 1905, | 3.00 |
| | 3 | John C. Palmer, Jr., 1905, | 3.00 |
| | 3 | Henry C. Hervey, 1905, | 3.00 |
| | 3 | Blaine W. Taylor, 1905, | 3.00 |
| | 3 | Geo. Poffenbarger, 1905, | 3.00 |
| | 4 | J. H. Miller, 1905, | 3.00 |
| | 4 | F. N. Reed, 1905, | 3.00 |
| | 4 | T. A. Brown, 1904-1905, | 6.00 |
| | 4 | U. G. Young, 1905, | 3.00 |
| | 4 | R. R. McMahon, 1905, | 3.00 |
| | 6 | Z. T. Vinson, 1905, | 3.00 |
| | 10 | Geo. R. E. Gilchrist, 1905, | 3.00 |
| | 10 | Jas. H. Strickling, 1905, | 3.00 |
| | 12 | J. C. McWhorter, 1905, | 3.00 |
| | 12 | T. M. Garvin, 1905, | 3.00 |
| | 12 | O. W. O. Hardman, 1905, | 3.00 |
| | 12 | W. G. Wilson, 1905, | 3.00 |
| | 16 | H. P. Camden, 1905, | 3.00 |
| | 18 | E. G. Smith, 1905, | 3.00 |
| | 21 | H. C. Thurmond, 1905, | 3.00 |
| | 21 | C. W. Dailey, 1905, | 3.00 |
| | 24 | Edgar P. Rucker, 1905, | 3.00 |
| | 24 | Wyndham Stokes, 1905, | 3.00 |
| | 26 | W. T. Ice, Jr., 1905, | 3.00 |
| | 26 | C. M. Murphy, 1905, | 3.00 |
| | 26 | Samuel V. Woods, 1905, | 3.00 |
| | 26 | C. F. Teter, 1905, | 3.00 |
| | 28 | J. A. Sheppard, 1905, | 3.00 |
| | 28 | W. L. Ashby, 1905, | 3.00 |
| | 28 | F. P. Moats, 1905, | 3.00 |
| | 28 | S. D. Turner, 1905, | 3.00 |
| | 31 | W. E. Chilton, 1905, | 3.00 |
| | 31 | Harry H. Byrer, 1905, | 3.00 |
| Nov. | 2 | W. T. George, 1905, | 3.00 |
| | 2 | Clark W. May, 1905, | 3.00 |
| | 6 | L. D. Isbell, 1905 & prev., | 15.00 |
| | 6 | C. W. Lynch, 1905, | 3.00 |
| | 8 | Jno. D. Alderson, 1905, | 3.00 |
| | 12 | H. W. Bayer, 1904, | 3.00 |
| | 12 | T. L. Henritze, 1905, | 3.00 |
| | 15 | A. G. Dayton, 1905, | 3.00 |
| | 15 | M. F. Stiles, 1905, | 3.00 |
| | 17 | M. D. Post, 1905, | 3.00 |

1905

| | | | |
|---|---|---|---|
| Nov. | 17 | Reese Blizzard, 1905..... | 3.00 |
| | 22 | B. B. Dovener, 1905,..... | 3.00 |
| | 22 | L. A. Reyman, 1905,..... | 3.00 |
| | 22 | C. E. Morris, 1905,..... | 3.00 |
| | 22 | T. S. Riley, 1905,..... | 3.00 |
| | 22 | F. W. Nesbitt, 1905, ..... | 3.00 |
| | 27 | W. H. Wolfe, Jr., 1905,..... | 3.00 |
| | 27 | Chas. E. Hogg, 1905,..... | 3.00 |
| | 27 | W. R. Thompson, 1905,..... | 3.00 |
| | 27 | H. Scott Rucker, 1905,..... | 3.00 |
| | 27 | X. Poole, 1905,..... | 3.00 |
| | 29 | F. W. Clark, 1905,..... | 3.00 |
| | 29 | W. Frank Stout, 1905,..... | 3.00 |
| Dec. | 1 | D. E. Matthews, 1905,..... | 3.00 |
| | 2 | A. L. Sawtelle, 1905,..... | 3.00 |
| | 2 | J. A. A. VanDale, 1905,..... | 3.00 |
| | 2 | John J. Davis, 1905,..... | 3.00 |
| | 2 | Chas. McCamic, 1905,..... | 3.00 |
| | 2 | H. B. Woods, 1905,..... | 3.00 |
| | 2 | H. C. McWhorter, 1905,..... | 3.00 |
| | 2 | Geo. E. Price, 1905,..... | 3.00 |
| | 2 | W. L. Wooddell, 1904-1905,..... | 6.00 |
| | 2 | E. H. Morton, 1905,..... | 3.00 |
| | 5 | O. S. Marshall, 1905,..... | 3.00 |
| | 5 | John A. Campbell, 1905,..... | 3.00 |
| | 7 | H. T. Houston, 1905,..... | 6.00 |
| | 9 | A. N. Campbell, 1905,..... | 3.00 |
| | 14 | W. W. Brannon, 1905,..... | 3.00 |
| | 15 | Andrew Edmiston, 1905,..... | 3.00 |
| | 15 | U. N. Arnett, Jr., 1905,..... | 3.00 |
| | 18 | L. C. Crile, 1905,..... | 3.00 |
| | 18 | W. N. Miller, ..... | 3.00 |
| | 23 | Neil J. Fortney ..... | 12.00 |
| | 26 | Interest on Deposit (F. & M. N. B.)..... | 12.00 |

**Receipts, Account "The Bar."**

| | | | |
|---|---|---|---|
| Jan. | 1 | E. H. Morton, 1904 & prev.,..... | 3.00 |
| | 1 | Tracy L. Jeffords, 1905,..... | 1.00 |
| | 1 | C. C. Watts, 1904,..... | 1.00 |
| | 1 | M. F. Snyder, 1905,..... | 1.00 |
| | 1 | C. M. Alderson, 1905,..... | 1.00 |
| | 1 | Grant P. Hall, 1905,..... | 1.00 |
| | 1 | Harvey W. Harmer, 1905,..... | 1.00 |
| | 1 | A. L. Lehman, 1905,..... | 1.00 |
| | 1 | John L. Lehman, 1905,..... | 1.00 |

1905

| | | | |
|---|---|---|---|
| Jan. | 1 | John P. Arbenz, 1905,..... | 1.00 |
| | 1 | Walter Pendleton, 1905,..... | 1.00 |
| | 1 | J. C. Simpson, 1905,..... | 1.00 |
| | 1 | N. C. Hubbard, 1905, ..... | 1.00 |
| | 6 | George C. Baker, 1904 & Prev.,..... | 3.00 |
| | 12 | W. B. Mathews, 1905,..... | 1.00 |
| | 12 | Jno. A. Campbell, 1904 & prev.,..... | 4.00 |
| Sept. | 2 | J. Hop Woods, 1905,..... | 1.00 |
| | 6 | Chas. J. Faulkner, 1905,..... | 1.00 |
| | 8 | J. T. Hoke, 1905,..... | 1.00 |
| | 14 | Mason G. Ambler, 1905,..... | 1.00 |
| | 14 | W. W. Van Winkle, 1905,..... | 1.00 |
| | 14 | B. M. Ambler, 1905,..... | 1.00 |
| | 14 | C. D. Merrick, 1905,..... | 1.00 |
| | 14 | A. D. Ireland, 1905,..... | 1.00 |
| | 14 | W. G. Peterkin, 1905,..... | 1.00 |
| | 14 | Dan. B. Leonard, 1905,..... | 1.00 |
| | 14 | Geo. W. Johnson, 1905,..... | 1.00 |
| | 14 | Levin Smith, 1905,..... | 1.00 |
| | 14 | Romeo H. Freer, 1905,..... | 1.00 |
| | 15 | James L. Hamill, 1905,..... | 1.00 |
| | 16 | John Bassel, 1905,..... | 1.00 |
| | 16 | W. R. D. Dent, 1905,..... | 1.00 |
| | 16 | A. W. Burdette, 1905,..... | 1.00 |
| | 16 | G. H. A. Kunst, 1905,..... | 1.00 |
| | 16 | Jackson V. Blair, 1905,..... | 1.00 |
| | 16 | M. H. Willis, 1905,..... | 1.00 |
| | 16 | H. H. Moss, Jr., 1905,..... | 1.00 |
| | 16 | A. G. Patton, 1904-1905,..... | 2.00 |
| | 16 | C. C. Higginbotham, 1905,..... | 1.00 |
| | 18 | C. L. Brown, 1905,..... | 1.00 |
| | 18 | N. C. Prickett, 1905,..... | 1.00 |
| | 18 | F. L. Blackmar, 1905,..... | 1.00 |
| | 18 | Roll Wells, 1905,..... | 1.00 |
| | 18 | J. F. Barron, 1905,..... | 1.00 |
| | 18 | J. T. McGraw, 1905,..... | 1.00 |
| | 18 | Haymond Maxwell, 1905,..... | 1.00 |
| | 18 | Felix C. Pifer, 1905,..... | 1.00 |
| | 18 | A. M. Poundstone, 1905,..... | 1.00 |
| | 18 | G. W. Fleming, 1905,..... | 1.00 |
| | 18 | H. C. Simms, 1905,..... | 1.00 |
| | 18 | E. S. Doolittle, 1905,..... | 1.00 |
| | 18 | T. B. Enslow, 1905,..... | 1.00 |
| | 19 | J. S. Spencer, 1905,..... | 1.00 |
| | 19 | B. F. Bailey, 1904-1905,..... | 2.00 |

1905

| | | |
|---|---|---|
| Sept. 19 | Claude W. Gore, 1905,..... | 1.00 |
| 19 | H. W. Williams, 1905,..... | 1.00 |
| 19 | W. P. Hubbard, 1905,..... | 1.00 |
| 19 | H. M. Russell, 1905,..... | 1.00 |
| 19 | J. B. Summerville, 1905,..... | 1.00 |
| 19 | John A. Howard, 1905,..... | 1.00 |
| 19 | B. S. Allison, 1905,..... | 1.00 |
| 19 | G. R. C. Allen, 1905,..... | 1.00 |
| 19 | S. G. Smith, 1905,..... | 1.00 |
| 19 | C. P. Flick, 1905,..... | 1.00 |
| 19 | James W. Ewing, 1905,..... | 1.00 |
| 19 | H. C. Richards, 1905,..... | 1.00 |
| 19 | Joseph R. Naylor, 1905,..... | 1.00 |
| 19 | Frank C. Cox, 1905,..... | 1.00 |
| 19 | R. M. Addleman, 1905,..... | 1.00 |
| 19 | Frank A. McMahon, 1905,..... | 1.00 |
| 19 | A. J. Clarke, 1905,..... | 1.00 |
| 19 | L. F. Stifel, 1905,..... | 1.00 |
| 19 | W. C. Meyer, 1905,..... | 1.00 |
| 19 | Geo. B. Caldwell, 1905,..... | 1.00 |
| 20 | W. E. Haymond, 1905,..... | 1.00 |
| 20 | Thos. L. Brown, 1905,..... | 1.00 |
| 20 | W. Mollohan, 1905,..... | 1.00 |
| 20 | G. W. McClintock, 1905,..... | 1.00 |
| 20 | W. G. Mathews, 1905,..... | 1.00 |
| 20 | M. H. Dent, 1905,..... | 1.00 |
| 20 | Clarence E. Martin, 1905,..... | 1.00 |
| 20 | J. M. Woods, 1905,..... | 1.00 |
| 20 | W. C. Kilmer, 1905,..... | 1.00 |
| 20 | D. C. Westenhaver, 1905,..... | 1.00 |
| 20 | A. C. Nadenbousch, 1905,..... | 1.00 |
| 20 | Allen B. Noll, 1905,..... | 1.00 |
| 20 | E. Boyd Faulkner, 1905,..... | 1.00 |
| 20 | Stuart W. Walker, 1905,..... | 1.00 |
| 20 | W. C. Mann, 1905,..... | 1.00 |
| 20 | D. B. Evans, 1905,..... | 1.00 |
| 20 | A. L. Hooten, 1905,..... | 1.00 |
| 20 | Thomas H. Cornett, 1905,..... | 1.00 |
| 20 | S. B. Hall, 1905,..... | 1.00 |
| 21 | G. W. Atkinson, 1905,..... | 1.00 |
| 21 | Thayer Melvin, 1905,..... | 1.00 |
| 21 | Ferdinand Wingerter, 1905,..... | 1.00 |
| 21 | A. G. Fickieson, 1905,..... | 1.00 |
| 21 | Robert White, 1905,..... | 1.00 |
| 21 | Geo. E. Boyd, 1905,..... | 1.00 |

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|---|---|---|
| Sept. 21 | Wm. H. Hearne, 1905,..... | 1.00 |
| 21 | Henry K. Drane, 1905,..... | 1.00 |
| 21 | Ire E. Robinson, 1905,..... | 1.00 |
| 21 | W. Dallas Payne, 1905,..... | 1.00 |
| 21 | S. B. Avis, 1905,..... | 1.00 |
| 22 | James S. McCluer, 1905,..... | 1.00 |
| 22 | John W. Davis, 1905,..... | 1.00 |
| 22 | John W. Mason, 1905,..... | 1.00 |
| 22 | B. F. Meighen, 1905,..... | 1.00 |
| 22 | Basil T. Bower, 1904,..... | 1.00 |
| 22 | W. G. Conley, 1905,..... | 1.00 |
| 22 | P. J. Crogan, 1905,..... | 1.00 |
| 22 | A. Bliss McCrum, 1905,..... | 1.00 |
| 22 | W. G. Brown, 1905,..... | 1.00 |
| 22 | E. D. Talbott, 1905,..... | 1.00 |
| 23 | R. A. Quarrier, 1905,..... | 1.00 |
| 23 | A. D. Preston, 1905,..... | 1.00 |
| 23 | H. L. Van Sickles, 1905,..... | 1.00 |
| 23 | Chas. S. Dice, 1905,..... | 1.00 |
| 23 | John A. Preston, 1905,..... | 1.00 |
| 23 | J. M. McWhorter, 1905,..... | 1.00 |
| 25 | Angus W. McDonald, 1905,..... | 1.00 |
| 25 | Forrest W. Brown, 1905,..... | 1.00 |
| 25 | J. M. Hamilton, 1905,..... | 1.00 |
| 25 | E. L. Robinson, 1904-1905,..... | 2.00 |
| 25 | B. L. Butcher, 1905,..... | 1.00 |
| 25 | W. M. O. Dawson, 1905,..... | 1.00 |
| 25 | B. F. Keller, 1905,..... | 1.00 |
| 25 | L. M. McClintick, 1905,..... | 1.00 |
| 25 | F. C. Leftwich, 1905,..... | 1.00 |
| 25 | J. F. Brown, 1905,..... | 1.00 |
| 25 | John Wehrle, 1905,..... | 1.00 |
| 25 | Malcolm Jackson, 1905,..... | 1.00 |
| 25 | E. W. Knight, 1905,..... | 1.00 |
| 25 | M. S. Hodges, 1905,..... | 1.00 |
| 25 | C. W. Dillon, 1905,..... | 1.00 |
| 27 | W. W. Jackson, 1905,..... | 1.00 |
| 27 | J. Howard Holt, 1905,..... | 1.00 |
| 27 | Wm. G. Caldwell, 1905, & prev.,..... | 2.00 |
| 27 | Alfred Caldwell, 1905,..... | 1.00 |
| 27 | A. J. Valentine, 1905,..... | 1.00 |
| 27 | C. O. Streiby, 1905,..... | 1.00 |
| 27 | Benj. Dailey, 1905,..... | 1.00 |
| 28 | Jno. J. Coniff, 1905,..... | 1.00 |
| 28 | Braxton D. Gibson, 1905,..... | 1.00 |

| | | 1905 |
|---|---|---|
| Sept. 28 | E. M. Showalter, 1905,..... | 1.00 |
| 28 | O. J. Chambers, 1905,..... | 1.00 |
| 28 | L. M. LaFollette, 1905,..... | 1.00 |
| 29 | Wm. McG. Hall, 1905,..... | 1.00 |
| 29 | Wm. P. Willey, 1905,..... | 1.00 |
| 29 | Joseph Moreland, 1905,..... | 1.00 |
| 29 | St. George T. Brooke, 1905,..... | 1.00 |
| 29 | D. C. Reay, 1905,..... | 1.00 |
| 29 | Geo. C. Baker, 1905,..... | 1.00 |
| 29 | Edgar B. Stewart, 1905,..... | 1.00 |
| 29 | S. F. Glasscock, 1905,..... | 1.00 |
| 29 | Jas. C. Frazer, 1905,..... | 1.00 |
| 29 | Wm. E. Glasscock, 1905,..... | 1.00 |
| 29 | C. W. Cramer, 1905,..... | 1.00 |
| 29 | T. O. Bullock, 1905,..... | 1.00 |
| 30 | L. J. Williams, 1905,..... | 1.00 |
| 30 | E. L. Nuckols, 1905,..... | 1.00 |
| Oct. 2 | H. B. Gilkeson, 1905,..... | 1.00 |
| 2 | R. W. Dailey, 1905,..... | 1.00 |
| 2 | W. B. Cornwell, 1905,..... | 1.00 |
| 2 | E. M. McPeak, 1905,..... | 1.00 |
| 2 | John J. Cornwell, 1905,..... | 1.00 |
| 2 | C. W. Osenton, 1905,..... | 1.00 |
| 2 | F. M. Reynolds, 1905,..... | 1.00 |
| 2 | Wm. McDonald, 1905,..... | 1.00 |
| 2 | W. C. Clayton, 1905,..... | 1.00 |
| 2 | J. F. Strader, 1905,..... | 1.00 |
| 3 | John C. Palmer, Jr., 1905,..... | 1.00 |
| 3 | Henry C. Hervey, 1905,..... | 1.00 |
| 3 | Blaine W. Taylor, 1905,..... | 1.00 |
| 3 | Geo. Poffenbarger, 1905,..... | 1.00 |
| 4 | J. H. Miller, 1905,..... | 1.00 |
| 4 | F. N. Reed, 1905,..... | 1.00 |
| 4 | T. A. Brown, 1905 & prev.,..... | 3.00 |
| 4 | U. G. Young, 1905,..... | 1.00 |
| 4 | R. R. McMahon, 1905,..... | 1.00 |
| 6 | Z. T. Vinson, 1905,..... | 1.00 |
| 10 | Geo. R. E. Gilchrist, 1905,..... | 1.00 |
| 10 | J. H. Strickling, 1905 & prev.,..... | 4.00 |
| 12 | J. C. McWhorter, 1905,..... | 1.00 |
| 12 | T. M. Garvin, 1905,..... | 1.00 |
| 12 | O. W. O. Hardman, 1905,..... | 1.00 |
| 12 | W. G. Wilson, 1905,..... | 1.00 |
| 16 | H. P. Camden, 1905,..... | 1.00 |
| 18 | E. G. Smith, 1905,..... | 1.00 |

1905

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|---|---|---|---|
| Oct. | 21 | H. C. Thurmond, 1905,..... | 1.00 |
| | 21 | C. W. Dailey, 1905,..... | 1.00 |
| | 24 | Edgar P. Rucker, 1905,..... | 1.00 |
| | 24 | Wyndham Stokes, 1905,..... | 1.00 |
| | 26 | W. T. Ice, Jr., 1905,..... | 1.00 |
| | 26 | C. M. Murphy, 1905,..... | 1.00 |
| | 26 | Samuel V. Woods, 1905,..... | 1.00 |
| | 26 | C. F. Teter, 1905,..... | 1.00 |
| | 28 | J. A. Sheppard, 1905,..... | 1.00 |
| | 28 | W. L. Ashby, 1905,..... | 1.00 |
| | 28 | F. P. Moats, 1905,..... | 1.00 |
| | 28 | S. D. Turner, 1905,..... | 1.00 |
| | 30 | W. E. Chilton, 1905,..... | 1.00 |
| | 31 | Harry H. Byrer, 1905,..... | 1.00 |
| Nov. | 2 | W. T. George, 1905,..... | 1.00 |
| | 2 | Clark W. May, 1905,..... | 1.00 |
| | 6 | L. D. Isbell, 1905 & Prev.,..... | 4.00 |
| | 6 | C. W. Lynch, 1905,..... | 1.00 |
| | 8 | Jno. D. Alderson, 1905,..... | 1.00 |
| | 12 | H. W. Bayer, 1904,..... | 1.00 |
| | 12 | T. L. Henritze, 1904-1905,..... | 2.00 |
| | 15 | A. G. Dayton, 1905,..... | 1.00 |
| | 15 | M. F. Stiles, 1905,..... | 1.00 |
| | 17 | M. D. Post, 1905,..... | 1.00 |
| | 17 | Reese Blizzard, 1905,..... | 1.00 |
| | 22 | B. B. Dovener, 1905,..... | 1.00 |
| | 22 | L. A. Reyman, 1905,..... | 1.00 |
| | 22 | C. E. Morris, 1905,..... | 1.00 |
| | 22 | T. S. Riley, 1905,..... | 1.00 |
| | 22 | F. W. Nesbitt, 1905,..... | 1.00 |
| | 27 | W. H. Wolfe, Jr., 1905,..... | 1.00 |
| | 27 | Chas. E. Hogg, 1905,..... | 1.00 |
| | 27 | W. R. Thompson, 1905,..... | 1.00 |
| | 27 | H. Scott Rucker, 1905,..... | 1.00 |
| | 27 | X. Poole, 1905,..... | 1.00 |
| | 29 | W. Frank Stout, 1905,..... | 1.00 |
| Dec. | 1 | D. E. Matthews, 1905,..... | 1.00 |
| | 2 | A. L. Sawtelle, 1905,..... | 1.00 |
| | 2 | J. A. A. Van Dale, 1905,..... | 1.00 |
| | 2 | John J. Davis, 1905,..... | 1.00 |
| | 2 | Chas. McCamic, 1905,..... | 1.00 |
| | 2 | H. B. Woods, 1905,..... | 1.00 |
| | 2 | H. C. McWhorter, 1905,..... | 1.00 |
| | 2 | Geo. E. Price, 1905,..... | 1.00 |
| | 2 | W. L. Wooddell, 1904-1905,..... | 2.00 |

1905

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|---|---|---|---|
| Dec. | 2 | E. H. Morton, 1905,..... | 1.00 |
| | 5 | O. S. Marshall, 1905,..... | 1.00 |
| | 5 | Jno. A. Campbell, 1905,..... | 1.00 |
| | 7 | H. T. Houston, 1904-1905,..... | 2.00 |
| | 9 | A. N. Campbell, 1905,..... | 1.00 |
| | 14 | W. W. Brannon, 1905,..... | 1.00 |
| | 15 | Andrew Edmiston, 1905,..... | 1.00 |
| | 15 | U. N. Arnett, Jr., 1905,..... | 1.00 |
| | 18 | L. C. Crile, 1905,..... | 1.00 |
| Jan. | 1 | M. G. Sperry, 1905,..... | 1.00 |
| Nov. | 29 | F. W. Clark, 1905,..... | 1.00 |
| Dec. | 18 | W. N. Miller, 1905,..... | 1.00 |
| | 23 | Neil J. Fortney, 1905 & Prev.,..... | 4.00 |
| | | | $272.00 |

**Disbursements, Account, West Va. Bar Assn.**

| 1905 | | | Voucher | Amount |
|---|---|---|---|---|
| Jan. | 7 | By Ck. West Va. Printing Co..... | 1 | 13.00 |
| | 7 | N. C. Hubbard, Secy.,..... | 2 | 38.07 |
| | 12 | Charleston Hotel Co.,..... | 3 | 299.00 |
| | 12 | The Tribune Printing Co.,..... | 4 | 10.25 |
| Feb. | 21 | Jno. T. Harris, Stenographer..... | 5 | 111.70 |
| Sept. | 1 | G. B. Gibbens, P. M.,..... | 6 | 4.00 |
| | 16 | B. M. Ambler,..... | 7 | 4.75 |
| | 18 | State Journal Co.,..... | 8 | 125.00 |
| | 23 | State Journal Co.,..... | 9 | 200.00 |
| | 26 | W. P. Willey, ..... | 10 | 4.00 |
| | 26 | W. G. Peterkin,..... | 11 | 23.35 |
| Oct. | 26 | G. B. Gibbons, P. M.,..... | 12 | 4.00 |
| Dec. | 19 | C. A. Kreps,..... | 13 | 50.00 |
| | | | | $887.12 |

**1905 Disbursements, Account, "The Bar."**

| | | Voucher | Amount |
|---|---|---|---|
| Jan. 6 | Balance from 1904 | | 245.95 |
| Jan. 6 | By Check to pay draft of W. P. Willey | 1 | 40.00 |
| Feb. 18 | By Check to pay draft of W. P. Willey | 2 | 40.00 |
| Mar. 15 | By Check to pay draft of W. P. Willey | 3 | 40.00 |
| Apr. 4 | By Check to pay draft of W. P. Willey | 4 | 40.00 |
| May 4 | By Check to pay draft of W. P. Willey | 5 | 40.00 |
| Jun. 13 | By Check to pay draft of W. P. Willey | 6 | 52.00 |
| Sep. 13 | By Check to pay draft of W. P. Willey | 7 | 40.00 |
| Oct. 10 | By Check to pay draft of W. P. Willey | 8 | 40.00 |
| Nov. 10 | By Check to pay draft of W. P. Willey | 9 | 40.00 |

| | | | | |
|---|---|---|---|---|
| Dec. 5 | By Check to pay draft of W. P. Willey | 10 | | 40.00 |
| | | | | $657.95 |
| Total receipts, including balance from last year, account dues | | | | $3,327.84 |
| Tctal receipts, account "The Bar" | | | | 272.00 |
| | | | | $3,599.84 |
| Disbursements, W. Va. Bar Association | | | $887.12 | |
| Disbursements, account The Bar, including balance from last year, | | | 657.95 | |
| | | | $1,545.07 | $1,545.00 |
| Balance to credit of Association | | | | $2.054.77 |

**President Mason**: You have heard the report of the Treasurer Is there any special action to be taken upon it? If not, the report will be received.

**Mr. W. N. Miller**: The report, under the constitution, goes to a special committee for auditing.

**Secretary Peterkin**: To a special committee appointed by the President to audit the report. He generally appoints a committee of two.

**President Mason**: I shall announce the appointment of that committee after the noon recess. The next order of business is the report of the Executive Council.

**Secretary Peterkin**: I have a letter from Professor Willey, Chairman of the Executive Council, saying that he has been detained at Morgantown by sickness but he hopes to be here to-night. He has sent his report, however, by Judge Cox, and I suppose I had better read it now.

### Report Of the Executive Council 1905.

To the President and Members of the West Virginia Bar Association:

At the semi-annual meeting of the Executive Council, held in August last, it was determined to recommend to this Association an amendment to the 23rd section of the Constitution relating to the annual election of officers. An amendment was made to this section at the last annual meeting providing for the appointment of a committee on nominations and the election of officers on the **first day** of each annual session. It was found that this did not operate satisfactorily for the reason that it hurried the Committee on Nominations and did not give sufficient time for deliberation in the important matter of the selection of the officers of the Association. Moreover many members of the Association do not arrive at the meeting until the afternoon of the first day, and are thus deprived of an opportunity to express a choice for the officers of the Association, in

which matter it is desirable that all should participate. The amendment, therefore, which the Council recommends is to make the report of the Committee on Nominations to occur at the close of the morning session and the election of officers to follow immediately after the opening of the afternoon session of the second day. The article as thus amended will read as follows:

Art. 23. As early as practicable on the first day of the annual meeting, the President shall appoint a special committee on nominations, to consist of five members, which committee shall receive all nominations which may be offered for any office, for membership in the Executive Council, and for delegates to the American Bar Association. This committee shall report to the Association not later than the close of the morning session of the second day, recommending one member of the Association for election to each office, five members for election as members of the Executive Council, and such number of members for election as delegates to the American Bar Association, as the Association may be entitled too.

The election of officers, members of the Executive Council, and delegates to the American Bar Association shall take place immediately after the opening of the afternoon session of the second day.

The Council further recommends an amendment to Art. 6 of the Constitution, adding to the list of the regular standing committees of the Association, a **Committee on Legislation,** to be appointed annually as the other standing committees are appointed.

The total annual cost of publishing the journal of the Association, "The Bar," amounts to about $450, divided as follows; $400 for printing; about $15 for copying the syllabi of the Court of Appeals; $23 for mailage; about $7 for postage; and about $6 for stationery and printing. The membership of the Association has now reached a number where the annual dues apportioned to The Bar, nearly meets the entire expense without any outside subscriptions, and will, doubtless, in a short time pay the whole bill.

In view of this fact, and in view of the great labor, expense, time, and immense correspondence involved in collecting subscriptions by mail, which really "costs more than it comes to," it was thought expedient during the past year to inaugurate the policy of cutting off all subscribers who did not renew their subscriptions by paying a year in advance. This had been the professed policy for a long time, but it did not work without the real thing, and last year they got the real thing. The result was a reduction of the outside subscription list to a minimum. The edition was reduced from 650 copies to 404. But subscribers finding that we mean business, have begun to renew, and it is hoped that a little education along this line will not only result in restoring the subscription list to the past standard, but at the same time relieve the chief burden connected with the publication of The Bar.

The cash balance on hand for the year is $43 and there is $80 due for advertisements which has not yet been collected.

The Executive Council congratulates the Association, on this 20th anniversary, on its growing influence, importance, and power as one of the organizations of the State, and bespeaks for it a future that will contribute much to the elevation of the Legal Profession, and the best interests of the public.

Respectfully submitted,

W. P. WILLEY,
Chairman.

**President Mason**: Gentlemen, you have heard the report of the Executive Council. What action do you want to take upon the recommendations made? Are there any particular recommendations to be acted upon?

**Secretary Peterkin**: The Council recommends two amendments—the first is to Article 23 of the constitution regarding the election of officers, or the report of the Committee on Nominations, and the second is to Article 6 relating to the appointment of a standing Committee on Legislation.

**Mr. B. L. Butcher**: I move the adoption of the amendment recommended by the Executive Council as to the election of officers. It seems to me it is a very practical suggestion and one that we ought to adopt.

**Mr. Nelson C. Hubbard**: I would be glad to hear some discussion now, relative to the best time for the election of officers. I do not know how much consideration was given to that matter by the Executive Council. Certainly the new plan did not have and could not have a fair trial at the last annual meeting. It has never seemed to me that this Association has accomplished very much and I think a good many others feel the same way. It has not accomplished nearly as much as other State Bar Associations have done and not so much as the National Bar Association, and I believe the reason for it is the absolute failure of its committee work. Every organization of any size now-a-days does its work through its committees. It does not undertake to do it itself at all. About all it does outside of its committee work is to adopt unanimously such resolutions as may be reported to it. Now, if that is so—if we have any idea of doing any good work in the future—it is fair to conclude we are going to do it by increasing the efficiency of the committees. A good part of the committee work ought to be done away from the annual meeting. Probably that wont happen at once and that for some time to come the best results can be obtained by having the initial meeting of the committees held during the annual meeting of the State Bar Association. Now, if that is desirable it certainly is necessary that these committees should be appointed at the earliest possible moment in the session. That means that the President will appoint these com-

mittees or that they must be selected at the earliest possible moment, and that in turn means that your Committee on Nominations has to be appointed, and has to receive nominations and that the Association has to have its election held just as soon as the other business will make it possible. I would be glad to hear from some people whose heads are a good deal older and wiser than mine why the change as suggested by the Executive Council is advisable. I do not believe in putting a premium on staying away from the first day's session of the Association. If there is any premium to be placed one way or the other, I would conclude that the men whose judgment on the election of officers is best worth having are those men who manage their engagements so that they can be here for both days. But comparing the present time with the older it has never made much difference who was present and who was not. The first man nominated for President was elected by acclamation. Our present President is the only one, so far as I know, in recent years, at least, who has been chosen by the deliberate action of the Association. Now, I do not see any reason why there should be a great number of names presented for any office. I do not believe the plan adopted by the American Bar Association is properly applicable to a small body like this. I do not think the governing council ought to announce a slate of officers for the ensuing year; they ought to have a number of presidential and other candidates. If we have thought about it before coming here, or even if we cannot come, we can send by mail the name of anybody as a nominee for any office and have that name referred to the Committee on Nominations, and have it passed on, and if we choose we can send our ballots by mail to be voted. I am firmly and strongly in favor of having the election of officers on the first day and as early on that day as possible.

**Mr. W. W. Brannon:** I desire to say, with reference to the matter pending before the Association, that the present mode of selecting our officers was prepared and presented after a very careful canvass and consideration of the whole question. Heretofore the Presidents have been elected about the close of the session, except at the last meeting, when the election was held under the present mode, and it is impossible for him to appoint, with any consideration, his various committees, and to do the work with which he is charged by the constitution and by-laws of the Association, with as much care and consideration as its importance requires. I want to say that I think we should change this mode of election with some hesitation and should move somewhat cautiously on that question, notwithstanding the reasons assigned by the Executive Council for the abrogation of the present plan. The President and other officers should be elected at the earliest possible moment in the session so as to give them an opportunity while the members of the Association are present to canvass and consider matters of importance which ought to have consid-

eration at that particular time and the consideration of which will have much to do with the success of the Association and the work of the current year. I am not prepared, so far as I am concerned, to vote for these changes without giving the old plan, or the plan adopted at the last session of the Association, a more thorough trial than has heretofore been accorded to it. There was some little trouble at that time, but I think if it is generally understood by the members of the Association that this important work with which the Association is charged is to be performed early in the session of the Association, that those interested in the welfare of the body will attend more regularly, and if they do not attend, why they cannot complain of what is done in their absence. Their absence amounts to a delegation to those who do attend of authority to act for them. It seems to me that the reasons presented by our estimable body known as the Executive Council are not sufficient to warrant a change in the present plan when it has been tried for so short a time, and I am not favorable to the change at the present time, and my views accord with those of my friend from Wheeling, Mr. Hubbard. I was a member of the Executive Council, as was my friend who has just taken his seat, at the time these recommendations were made. The plan adopted did not work so well, it is true, at the first session after the amendments now in force were adopted, but I believe that with further trial the present plan is an improvement over the old one. If our brothers understand that we mean business about this important matter of business they will either attend or they will not complain of what their brethren who do attend do about an important matter of that kind.

**President Mason**: Is there any further discussion, gentlemen? The recommendations made by the Executive Council are divisible. Will the Secretary please report the first recommendation; we would better vote on that first.

**Secretary Peterkin**: The first recommendation is an amendment to Article 23. Perhaps I had better read the article as it now stands and then read it is it is proposed to amend it:

"As early as practicable on the first day of the annual meeting, the President shall appoint a special committee on nominations, consisting of five members, which committee shall promptly meet, receive all nominations which may be offered for any office, for membership in the Executive Council, or for election as delegate to the American Bar Association, and shall report to the Association not later than the afternoon of the first day, all such nominations, with any others which they may see fit to present."

The recommendation is to amend this article so it will read as follows:

"As early as practicable on the first day of the annual meeting, the President shall appoint a special committee on nominations, to

consist of five members, which committee shall receive all nominations which may be offered for any office, for membership in the Executive Council and for delegates to the American Bar Association. This committee shall report to the Association not later than the close of the morning session of the second day, recommending one member of the Association for election to each office, five members for election as members of the Executive Council and such number of members for election as delegates to the American Bar Association as the Association may be entitled to. The election of officers, members of the Executive Council, and delegates to the American Bar Association shall take place immediately after the opening of the afternoon session of the second day."

**President Mason**: Gentlemen, are you ready to vote upon the recommendation of the Executive Council to amend Article 23?

The question on the recommendation to amend was propounded by the chair and the amendment was lost.

**President Mason**: The Secretary will please report the second recommendation made by the Executive Council.

**Secretary Peterkin**: The second recommendation is this: "The Council further recommends an amendment to Article 6 of the Constitution adding to the list of the regular standing committees of the Association a Committee on Legislation, to be appointed annually as the other standing committees are appointed."

**President Mason**: Gentlemen are you ready to vote upon that proposition?

The question on the recommendation to amend was propounded by the chair and the amendment prevailed.

**President Mason**: Is there any further discussion, gentlemen, or action to be taken upon the recommendations of the Executive Council. I believe those were the only special matters referred to it.

**Mr W. N. Miller**: I am going to make a suggestion in connection with the resolution just adopted. There is nothing recommended by the Executive Council in that report as to what the duties of that Committee on Legislation shall be. The constitution provides what the duties of the other standing committees shall be.

**President Mason**: Can't it be read in connection with some other article?

**Mr. W. N. Miller**: It can't unless there is some other article of that kind injected into the constitution.

**Mr. W. P. Hubbard**: Mr. President, if the constitution as it stands, with reference to the choice of officers, is to be carried out and that amendment adopted last year is to be given a fair trial, I respectfully submit that the President should, as early as practicable on the first day of the session, appoint the Committee on Nominations and that no other business should be transacted until that business is done.

**President Mason**: I will appoint as the committee to audit the Treasurer's report, Mr. Ira E. Robinson and Mr. B. L. Butcher. As the Committee on Nominations, Mr. W. W. Brannon, Mr. W. P. Hubbard, Mr. George E. Price, Judge T. P. Jacobs and Prof. St. George Tucker Brooke.

**Mr. W. P. Hubbard**: In order that Judge Jacobs' resolution about naturalization shall be properly considered by the committee and promptly reported on, the depleted ranks of that committee ought to be filled up. Four out of five are absent. On inquiring of their neighbors I find that Mr. Ambler, the chairman, will be here tonight. While the committee has not had any meeting it is extremely likely that Mr. Ambler will have a full report in these proceedings covering this and all other topics, which will help out very much. Mr. Bassell will be here soon; but the two other members—Mr. Knight and Mr. Vinson—I learn will not be here during the session. I therefore move that the President be authorized to name two additional members of that committee to serve during this meeting of the Association.

**Judge T. P. Jacobs**: I second the motion.

**Mr. George E. Price**: I would like to inquire by what authority that motion is made? My understanding is that these committees are appointed regularly. They are standing committees and they are of a certain number, and I do not see how you can set aside some members, because they are not here, and substitute somebody else in their places.

**Mr. W. P. Hubbard**: It don't strike me that it is as much of an irregularity as that Mr. Price should move a reference of a resolution to a committee which he knew could not possibly act on it, because he knew there was only one out of five men here.

**Mr. George E. Price**: I would be perfectly willing to get the judgment of that one man on that proposition.

**Mr. W. P. Hubbard**: He hasn't any judgment on the subject and no voice to pronounce it if he had it. If we are in earnest about this matter—if Mr. Price wants this submitted to a committee—I think he is the last man in the world who ought to raise that parliamentary question. But this matter can be got at. We can reconsider the action already taken and send that resolution to a special committee. I think my friend who has taken this matter away from the consideration of the Association on the ground that it has to be considered by a committee, ought not to raise an objection when an effort is made to so constitute that committee that it may consider and act upon it. If he insists upon his point the chairman may rule upon it and then we will see if the Association cannot in some way have this matter acted upon.

**Mr. George E. Price**: I did not know the other members of the committee were not here and if I had, my action would not have been different. I do not see any reason why the same action may not be

taken on this matter that is taken upon other matters that are referred to the committees. Here is a lone gentleman on the Committee on Admissions, who has asked for time to consider, but he is not going to keep out these applicants, and as there is nobody to help him he is going to discharge his duty, and I feel like insisting on the Committee on Judicial Administration and Legal Reform discharging its duty whether its membership is one or half a dozen. Whether it was best to refer that matter to that committee is past consideration. If the gentleman wanted to object to that disposition of the resolution the objection ought to have been made when the motion was offered. That was a mere method of disposing of a question which I was not prepared to vote on and on which I wanted the mature consideration of a committee. I would suggest if nothing else can be done that the committee can report the resolution back without recommendation. That is the usual way of escape from deciding a question. But I do object, Mr. President, and I shall object to adding members to a standing committee by mere motion. I do object to that. I have no objection to any other disposition of this resolution that may be made, but I think we had better stick to the old land marks of the constitution.

**President Mason**: Can't you put it in shape for the chairman to help you out in this matter? Would it be agreeable for the chair to request Judge Jacobs, the mover of the resolution, to serve on that committee in place of his nearest neighbor on the committee who is absent, Mr. Vinson, and for Mr. Price to serve in the place of his neighbor, Mr. Knight? What is the pleasure of the Association?

**Mr. George E. Price**: I do not know what time the chairman of the Committee on Admissions asked for in which to file their report as to new members. That is a matter that ought to receive attention as early as possible.

**Mr. A. L. Lehman**: The committee will be ready to report immediately after dinner.

**President Mason**: Before we adjourn the Secretary requests that all the members present who have not done so, will come to the Secretary's desk and register immediately after we take a recess.

**Mr. M. F. Snider**: I move that we take a recess until two o'clock.

Which motion was put and carried.

## FIRST DAY: AFTERNOON SESSION.

The Association re-assembled at two o'clock p. m.

**President Mason**: The Association will please come to order. We will have the report of the Committee on Admissions, if it is in proper shape.

**Mr. A. L. Lehman**: Mr. Chairman: I have not yet been able to find any other member of the committee, but if the Association is willing to accept the report of one, I am ready to make it.

**President Mason**: If there is no objection the report will be received.

Mr. A. L. Lehman here presented the report of the Committee on Admissions.

### Report Of Committee On Admissions.

Hon. John W. Mason,
President West Virginia Bar Association.

Sir:—

Your Committee on Admissions begs to report to you and through you to the Association as follows:

In order that applications might be more readily made in conformity to the requirements of the constitution, a blank form of application for membership, adapted both to counties having a local association and those having none, was prepared and printed for distribution, which plan was used by the Committee last year and found very satisfactory. As a precaution for the guidance of the Committee a space was provided in the printed blanks for the endorsement or recommendation of a member of the Association of each application.

Thus recommended, and all requirements of the constitution having been complied with, it affords your Committee great pleasure in nominating for members in the West Virginia Bar Association each of the 56 attorneys named on the accompanying list of applicants, 48 of whom are members of County Associations and 8 are not, there being no local association in the county where the latter reside.

To facilitate the balloting the Committee has prepared and submits herewith printed ballots containing all the names herein proposed.

Respectfully submitted,
A. H. LEHMAN,
Chairman Committee on Admissions.

### Applicants for Admission.

Alexander, G. M., Fairmont; Brannon, Linn, Weston; Bowers, E. A., Elkins; Campbell, C. W., Huntington; Conaway, Waitman H., Fairmont; Chase, George, Parkersburg; DeShields, H. C., Fairmont; Fleming, A. B., Fairmont; Fleming, R. F., Fairmont; Fleming, A. S., Fairmont; Fitzpatrick, Herbert, Huntington; Hughes, W. W., Welch; Haymond, W. S., Fairmont; Hartley, E. F., Fairmont; Henshaw, John, Fairmont; Holdsberry, Leroy V., Philippi; Hoffheimer, George N., Clarksburg; Hoge, Patrick M., Fairmont; Jordon, Ivory C., Charleston; Kirby, J. P., Fairmont; Kendall, U. S., Fairmont; Koontz, Ben D., Fayetteville; Lively, H. S., Fairmont; Lazelle, I. G., Morgantown; Lowe, Scott C., Fairmont; Morris, Tusca, Fairmont; McCauley,

G. W., Moorefield; Meredith, J. A., Fairmont; Maxey, Edwin, Morgantown; Meredith, W. S., Fairmont; Morgan, E. F., Fairmont; Neely, M. M., Fairmont; Ogden, M. W., Fairmont; Powell, Charles, Fairmont; Peck, Melville, Philippi; Parks, T. N., Fairmont; Reger, Roy, Buckhannon; Ramage, B. F., Fairmont; Stanley, Amos O., Fairmont; Scherr, Harry, Williamson; Shirley, George P., Parsons; Swint, Charles P., Weston; Showalter, H. C., Harrisville; Stokes, S. D., Williamson; Smith, W. W., Morgantown; Shaw, Harry, Fairmont; Shaver, C. L., Fairmont; Taylor, Le Roy, Mannington; Wallace, George S., Huntington; Wamsley, Jared L., Beverly; White, Kemble, Fairmont; Yeager, L. A., Morgantown; Yoke, Frank, Morgantown; Watts, R. A., Fairmont; Vincent, G. A., Fairmont; Carrigan, Charles E., Moundsville.

**President Mason**: What shall be done with the report?

**Mr. A. L. Lehman**: Do you wish this list of names read?

**Mr. George E. Price**: If the names are on the ballots I move that we dispense with the reading of the names and proceed to ballot at once.

Which motion was put and carried.

**President Mason**: I will request Mr. M. F. Snider and Mr. Nelson C. Hubbard to act as tellers.

The vote was taken and the tellers reported that all persons named on the ballots had received unanimous vote of the members present.

**President Mason**: The tellers report that the gentlemen named have received the unanimous vote of the Association; therefore they are declared to be duly elected members of the Association.

I wish to announce that I have requested the following gentlemen to proceed as far east as Grafton, or farther if they can, to meet Judge Stafford, who will be here on the evening train to deliver the annual address: Judge Kendall, Judge Haymond, J. P. Kirby and Ira E. Robinson.

The next item on the regular order of business will be the report of the Committee on Nominations. Is that committee ready to report?

**Mr. W. W. Brannon**: Mr. President, and gentlemen of the Association, the Committee on Nominations reports the following names for the following offices:

**Report Of the Committee On Nominations.**

President—A. G. Dayton, J. W. Vandervort, John W. Davis.

Vice Presidents—First Congressional District, M. F. Snyder; Second Congressional District, William MacDonald; Third Congressional District, E. W. Knight; Fourth Congressional District, H. H. Moss, Jr.; Fifth Congressional District, Wells Goodykunst.

Secretary—Harvey F. Smith, W. G. Peterkin.

Treasurer—W. N. Miller, Wm. Gordon Mathews.

Executive Council—W. P. Willey, B. M. Ambler, H. M. Russell, Elliott Northcott, E. L. Nuckolls.

Delegates American Bar Association—John W. Mason, H. C. Hervey, M. F. Snyder, C. M. Alderson, L. J. Williams, Robert W. Dailey.

T. P. JACOBS, Secretary,
W. W. BRANNON, Chairman.

**President Mason**: Gentlemen, you have heard the report of the committee. What shall be done with it? Will you take action on it now or let it lie over until tomorrow?

**Mr. W. W. Brannon**: My understanding is that the report may be accepted but of course the time under the constitution for the election will be to-morrow.

**President Mason**: Well, then, of course the report of the committee will be received, but action upon that report will be deferred until to-morrow.

**Mr. Nelson C. Hubbard**: Is that correct—that the constitution provides that action on that report shall be taken to-morrow? That is the proposition that was just voted down and I move that we now proceed to the election of officers.

**President Mason**: I haven't taken time to examine but if there are no constitutional objections, and it is in order, we will proceed with the election now. Are you ready for the question upon the motion of Mr. Hubbard to proceed with the election?

The question was put by the chair and the motion was carried, and Messrs. Hubbard and Fleming were appointed tellers.

**Election Of Officers.**

The election of officers was then held with the following results:

President—John W. Davis.

Vice Presidents—First District, M. F. Snyder, of Clarksburg; Second District, William MacDonald, of Keyser; Third District, E. W. Knight, of Charleston; Fourth District, H. H. Moss, Jr., of Parkersburg; Fifth District, Wells Goodykunst, of Williamson.

Secretary—Wm. G. Peterkin, of Parkersburg.

Treasurer—W. N. Miller, of Parkersburg.

Executive Council—W. P. Willey, of Morgantown; B. M. Ambler, of Parkersburg; Henry M. Russell, of Wheeling; Elliott Northcott, of Huntington; E. L. Nuckolls, of Fayetteville.

Delegates to the American Bar Association—Judge H. C. Hervey, of Wheeling; Robert W. Dailey, of Romney; L. J. Williams, of Lewisburg.

**President Mason**: The next item in the regular order of business will be a paper by Captain A. M. Poundstone, of Buckhannon, on "Proceedings in Causes Before Judgment or Decree." We shall be glad to hear from Captain Poundstone, and as he is so well known to

you it will not be necessary for me to present him with any formal introduction.

(For Captain Poundstone's paper, see Appendix II.)

**President Mason**: The paper just read by Captain Poundstone is now before the Association for discussion. If nothing is to be said upon it the next order of business is a paper to be read by Mr. Mason G. Ambler, of Parkersburg, entitled "A Plea for the Protection of Our Forests, Streams and Fuels."

(For Mr. Ambler's paper, See Appendix III.)

**President Mason**: Gentlemen, the paper just read is now before the Association for discussion.

**Mr. W. W. Brannon**: Mr. President, I desire to say with reference to the able and admirable paper of our learned young friend, that I am glad that the subject was named as one of the papers for discussion and I am glad that he has discussed it so ably and forcibly as he has. I claim the honor of being the pioneer in the urging of this matter that some steps should be taken and some plan adopted by the State for the preservation of the forests and fuel of the State. by bill or otherwise some plan whereby the forests of the State might I had the honor in the session of 1901, to prepare and submit a resolution directing the judiciary committee to investigate and report be effectually protected from destruction. I likewise presented a resolution at the time, in which I took great pride, requesting that the same committee be required to investigate and report the propriety and constitutionality of some legislation looking to the regulation of the transportation of gas and more especially for the prevention of the waste of gas in the State of West Virginia. It seems to me we ought to give some attention to these very important subjects which have been so ably discussed.

The legislative bodies of 1901, like other bodies of that kind which have preceded and followed, paid very little attention to the subject of water. They did discuss the matter of purifying and keeping pure a certain stream of the State and especial attention was urged by the humble individual who now addresses the body to the importance—the very great importance as it then appeared to him—of some definite policy to be adopted by the State whereby the object at which our friend's paper aims so strongly, should be accomplished. As I understand the matter our constitution has been so amended to-day as to create a Committee on Legislation. Something was said at the time of the proposed amendment to the effect that it was objectionable because it prescribed no particular duties with which that committee should be charged. However, the amendment was adopted, as I understand, and I move if the Association please, Mr. President, that this very able and admirable paper of our friend be committed to this Committee on Legislation, which is to be appointed by the President, for its consideration and report.

**President Mason**: Gentlemen, you have heard the motion of Mr. Brannon, that this paper read by Mr. Ambler be referred to the Committee on Legislation with instructions to examine and report. Are you ready for the question?

**Mr. B. L. Butcher**: It seems to me there is one objection to that motion. My objection is not to the paper but to the fact that the paper read by Captain Poundstone has a similar object in view of presenting matters to the legislature, as I understand it, and one in fact that I regard as vital in facilitating business in the courts. I think that all questions of legislation should be referred to the Committee on Legislation to be hereafter appointed because if you are going to single out one paper and refer it to the committee, it would look like we did not want any legislation on the other subject. We may need legislation on both subjects, and for that reason the committee ought to be charged with both subjects. Therefore I move to amend the motion by including Captain Poundstone's paper, so far as it relates to proposed legislation.

**Mr. W. W. Brannon**: I desire to accept the amendment. I thought when I made the motion in reference to the paper of our friend Mr. Ambler that I would at a later time in the proceedings make a similar motion in reference to Captain Poundstone's paper. I think the amendment proposed by the gentleman from Marion is eminently proper and I accept it with pleasure.

**President Mason**: The amendment has been accepted, that Captain Poundstone's paper be included and referred to the Committee on Legislation.

The motion was put by the chair and carried.

**President Mason**: The next item in the regular order of business is the selection of the time and place for the next annual meeting of the Association. What is the pleasure of the Association? I believe we will have to select the place only; the time has been left, for several years past, with the Executive Council.

**Mr. W. N. Miller**: I believe the usual method of selecting the place for the annual meeting is by nominating a place and taking a vote on it. I move that nominations be now in order.

**President Mason**: Unless we have some place named, we might as well just adjourn to meet in Fairmont next year.

**Secretary Peterkin**: The constitution provides that if no place is named, the Association will meet in Parkersburg.

**Mr. W. W. Brannon**: After the banquet is over our President might not be so ready with a suggestion of the kind that he has just made.

**President Mason**: It is moved that we now select a place for the next meeting of the Association.

The motion was put by the chair and carried.

On motion of Mr. J. L. Wamsley, the city of Elkins was selected as the place of the next meeting.

**President Mason**: The next regular annual meeting of the Association will be held at the city of Elkins. I take it, gentlemen, that the time will be left to the Executive Council unless otherwise ordered. Will you fix the time, or more properly speaking, gentlemen, what is your pleasure as to the time.

**Mr. George E. Price**: I move that the time be fixed by the Executive Council. I take it that they can confer with the local bar at Elkins and fix the time better than we can now.

**President Mason**: It has been moved that the time of holding our next annual meeting be fixed by the Executive Council.

The motion was put by the chair and carried.

**President Mason**: We will now have the report of the Committee on Judicial Administration and Legal Reform. Mr. W. P. Hubbard seems to be the only representative of that committee here.

**Mr. W. P. Hubbard**: I have never even been notified that I was a member of that committee.

**Secretary Peterkin**: I move that the report of that committee be passed until the chairman, Mr. Ambler, arrives. I know he has some paper prepared to submit on behalf of the committee as I heard him speak of it the other day.

**President Mason**: If there is no objection it is so ordered. Next is the report of the Committee on Grievances, Mr. T. P. Jacobs, chairman.

## Report Of the Committee On Grievances.

To the President and Members of the West Virginia Bar Association:

Your committee begs leave to report that it has a clean docket so far as the conduct of the membership is concerned.

No complaint has been lodged against any individual and its members start upon the new year with a clean bill of professional health.

There are two matters, however, of which the committee takes cognizance:

Some weeks ago the secretary placed in the hands of the chairman two communications from the Martindale Mercantile Agency, of New York, complaining of a certain firm of lawyers in one of the counties of the State.

It seems a client of the Agency placed a claim for collection in the hands of said firm. The money was collected and not paid over. One member of the firm confessed to the collection and appropriation, and as he says throgh an unfortunate circumstance had not remitted his client. This is no excuse. What the unfortunate circumstance was is not stated, and it is not easily perceived what the unfortunate circumstance could be which would excuse a prompt remittance of money collected.

Your chairman promised the agency to look into the matter but made no binding representation further, unless it should be found that the circumstances gave the committee and the Association jurisdiction of the matter.

An investigation discloses the fact that neither member of the aforesaid firm of lawyers is a member of this Association. Besides, the subject matter of the dispute arose in the State of Virginia, and the members of the firm afterwards came to this State.

The committee is of opinion that this Association has neither the jurisdiction nor the machinery to take cognizance of the matter of which the Agency complains, and while it would ever be alert to take notice and action on the conduct of its own members, it cannot go beyond its own circle to discipline non-members.

The Agency and its counsel or some County Bar Association are the appropriate instrumentalities to which resort must be had in reaching such derelict members of the profession.

Another matter: Since the last annual meeting of the Association, the 56th volume of the State reports has been placed in the hands of the profession.

A perusal of that volume discloses one hundred and twenty typographical errors, with no table of "errata."

We presume the omission of the "errata" was due to a doubt in the mind of the editor as to whether the profession would take the table of "errata" for the book or the book for the table of "errata." We think he wisely omitted the table.

Most seriously, the profession pays enough for the reports to demand as a matter of right a well bound, well printed, durable book for the consideration paid.

There is probably no State in the union whose reports are such shameless travesties upon legal book-making.

It is sincerely hoped the present Attorney-General will give us material improvement in this respect in the immediate future.

Respectfully submitted,
Committee on Grievances,
THOS. P. JACOB,
GEO. A. PRICE.

**President Mason**: What shall be done with the report.

**Mr. John Bassell**: I move it be received and adopted.

The motion was propounded by the chair and carried.

**Mr. John J. Coniff**: Mr. President: The report contains something that I do not believe is generally understood by the members of the Association, and that is the suggestion that this Association has no right to investigate non-members. Now, if that is the impression that prevails I think it ought to be corrected as soon as possible. Why shouldn't this Association investigate any man who pretends to practice law in West Virginia and why shouldn't this Association also attempt to investigate some fellow who comes from another State

who is not fitted to practice here by reason of professional misconduct? I never had any idea that the Association could not and should not investigate anybody. In fact aren't we better fitted to do that by reason of our union, as you might call it, or combination? Lately in our county of Ohio we have had this same question to deal with and the local Bar Association took it up as a body and acted on it as an association and the result of it was that the association has applied to the circuit court there to strike from the roll a lawyer who has never been a member of the association. Now, I think that should be the plan of this Association. I only suggest this with the view of having the duties of that committee enlarged if necessary. I do not know what the constitution prescribes as to its duties, but certainly its duties ought to be extended, I think, to take hold of every man who attempts to practice law in this State who does not conduct himself properly, if necessary. Why shouldn't we? We are in a sense the guardian of that very thing and the fellow who desires to indulge in that sort of conduct may escape being investigated by escaping membership in this organization. I move, Mr. President, if it is proper—but I have not examined the constitution—that that committee as to its duties be instructed that it is considered within its power to investigate persons who are not members of this Association.

**Mr. W. P. Willey**: I second the motion.

**President Mason**: You have heard the motion; That it be declared that it is the sense of this Association that the Committee on Grievances has the right to investigate the conduct of persons practicing law in this State even thought they should not be members of this Association. Is there any discussion on that question?

**Judge T. P. Jacobs**: We have a constitutional provision upon that subject. Section 13 provides that "The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of law and the administration of justice, and report the same to the Association with such recommendations as they may deem advisable. The proceedings of this committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association."

Now, Mr. President, if it is the purpose of the proposed motion or resolution to comment upon or to interpret this section, it seems to me that we are going upon dangerous ground. If the motion is as wide in its scope as I think it is, it would permit the whole fraternity to dump into the lap of this committee any frivolous complaint that might be made against any lawyer in this State. As I understand the constitutional provision, it is that the committee "shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of law and the administration of justice." Now, here come some letters from a non-resident collec-

tion agency away out of the State, complaining about some matter occurring over in the State of Virginia. Certainly we are limited in jurisdiction territorially to some extent at least and why should this committee undertake to investigate a dispute arising between counsel and client in the commonwealth of Virginia. There must be some limit to it. Besides that, it is contemplated, I think, by a fair interpretation of this provision, that there must be some formal complaint lodged by some responsible party and give an opportunity to the accused party to be heard. None of this has appeared before this committee; it has not come in such a way as to authorize the committee to take it up and make any recommendation whatever. It is provided in another place in this constitution that the accused shall have notice and a right to be heard and the committee decline to be a kind of side show to these self constituted commercial and collection agencies wherever they may choose to operate or spring up. The committee primarily, as I understand, was raised and created for the purpose of investigating the conduct of its own members as to matters affecting the interests of the profession and the administration of the law generally, but I do not understand that the committee or the Association itself may go out and investigate persons who have not chosen to come in and become members of this Association. It would lead to a continual investigation of matters of more or less importance and would be giving undue prominence to those persons who have not seen fit to make application to this Association to become members and who possibly could not get in even if they would make application. It occurs to me that the suggestion made in this report that matters of the kind and character complained of are very well within the control of the party complaining, or his counsel, or its counsel, or of the local bar association, and should not be brought primarily to the attention of this Association, is a proper suggestion.

**Mr. John J. Coniff**: It was not my purpose to suggest that any particular action ought to be taken as to the matter of the Martindale Mercantile Agency; the only purpose was to offset the suggestion that this committee should not investigate the conduct of nonmembers of this Association. Since I have heard the constitution read, I find there is no necessity for the motion. It is too plain to quibble over. It does not limit this investigation to members of this Association and clearly covers every practitioner in the State of West Virginia. The only thing is to avoid having this committee turn down proper complaints that may be made concerning people who may not be members of this Association. In order that the Association may not be committed to the report, I will withdraw my former motion and move that we reconsider that report, and then if that is done, I will make a motion that that part of the report be not adopted.

**President Mason**: The motion just made has been withdrawn and the motion now is that we reconsider the vote whereby the report of the Committee on Grievances was adopted.

**Mr. George E. Price**: I thought when the motion was made to adopt the report that it was irregular, but it was not a material matter and I did not think it necessary to interpose any objection. I do not understand that reports of committees are adopted by a body like this only as we may adopt any action that the committee recommends to be taken.

**President Mason**: I think the chair simply receives the report.

**Mr. George E. Price**: Yes sir; and I really think no motion is necessary when the report of a committee is made that it should be adopted. It is merely filed with the secretary and no motion is necessary at all. If there is anything in a report that needs action, then that is done by resolution either in the report of the committee or by some member of the Association. Therefore I am in sympathy with the motion of the gentleman to reconsider the motion by which the report was adopted, but I do not want that to be construed necessarily as adopting his view that it is the business of the Committee on Grievances of this Association to undertake the investigation and prosecutions in the different counties of the State of any irregularities practiced by members of the bar not members of this Association. I think, sir, that this is a State Association; it is not intended to be local in its jurisdiction; that's the point I want to make; that this committee would have no power to bring in a member of the bar not a member of this Association or to summon him to answer charges.

**Mr. W. B. Cornwell**: One question upon that point: Suppose that complaints should be made against some party—some member of this Association—and that the party accused might become apprised of that fact and would immediately tender his resignation to the proper officer of this Association. Then carrying out your views and those of Judge Jacobs, would this Association have any power to act in that case or would the party any longer be regarded a member of the Association and might he not in that way escape any action recommended by the Association?

**Mr. George E. Price**: I take it if a man is a member of this Association and he wants to resign that he cannot resign without the consent of the Association. The Association would probably not consent to his withdrawal from the Association pending charges against him, that would be my solution of that difficulty. Now, I think, sir, that the matter of improper practices by any member of the bar who is not a member of this Association is a matter for the jurisdiction of the local bar association. That is the only competent body to deal with him. It is perfectly competent for the local association, as has been suggested by the gentleman, to see to matters pertaining to its members. It has power to maintain its purity and to appoint a committee and prefer charges against members of its bar to its own court. That, I think, is one of the provinces of the local bar association; but this Association, I do not think, should undertake that work. I do not think it ought to be expected to undertake that work; but if any

member of this Association should be guilty of improper practices, that matter can be brought here and then we can take some steps and bring the action of this Association upon him in such a way that he could not afterwards practice law in this State. An adverse report here would be sufficient to exclude him, it seems to me, in almost any county in the State and bring about such action as would disbar him. I think that would be as far as we could afford to go and that was the committee's reason for so interpreting that clause of the constitution. I should dislike very much, sir, to feel that the Association expected the Committee on Grievances to investigate charges against lawyers outside of the different counties of the State. I do not think it can be done properly. I do not think we can bring parties before us to whose case we could not give the proper kind of a hearing. Besides, the members of the committee would be put to too much trouble and expense on their own account in getting together, as there is no fund provided out of which they could be paid, and that certainly makes it impracticable.

**President Mason**: Gentlemen, the question is that the motion as adopted by the Association approving or adopting the report of the Committee on Grievances be reconsidered.

The question was propounded by the chair and the vote was reconsidered.

**President Mason**: Now, that the vote has been reconsidered, unless there be some objection the report will be received and filed. I might state along that same line referred to by the Committee on Grievances, that one or two persons during the year wrote me on the same subject, and the view I took of it in an offhand way, without giving it much consideration was, that the parties not being members of the State Bar Association, we could not take jurisdiction. I do not see how this Association could punish them in any way but I expressed an opinion in response to the parties who wrote me that if any attorney in the State had done anything that was illegal, that we had statutes upon that subject and they would have to seek their remedy in the court where the thing occurred. I did not consult with the committee on the subject, but that was the view I took of it.

**Mr. George E. Price**: Before the subject is dropped I wish to say with reference to Mr. Cornwell's suggestion that sections 20 and 21 seem to cover the point he made. Section 20 provides that "any member may be expelled by a majority of this Association at any annual meeting." Section 21 reads: "Any member may resign at any time upon the payment of all dues for the current year in which the resignation is tendered; provided, there be no charges for misconduct against such member."

**Mr. John J. Coniff**: I would like to have that part of the report to which I made objection read, that refers to non-members.

The Secretary read from the report as follows:

"An investigation discloses the fact that neither member of the aforesaid firm of lawyers is a member of this Association. Besides, the subject matter of the dispute arose in the state of Virginia, and the members of the firm afterwards came to this State.

"The committee is of the opinion that this Association has neither the jurisdiction nor the machinery to take cognizance of the matter of which the Agency complains, and while it would ever be alert to take notice and action on the conduct of its own members, it cannot go beyond its own circle to discipline non-members."

**Mr. John J. Coniff**: Mr. President, I move now that we disapprove that part of the report which says that this committee cannot go beyond our own membership and discipline non-members. Now, the purpose of my other motion was misunderstood by Judge Jacobs. It was not my purpose that this committee should take up these matters of its own accord. I assumed, in making the objection, that complaint would be made properly before the committee. It was not my purpose that the committee should attempt to bring a non-member before this Association. Of course that cannot be done. It was not the purpose that this committee should attempt to punish a non-member, which of course could not be done. My sole purpose was to show that this Association enjoys more independence than any local bar association. Every county association is hampered—hampered in a way that must occur to all of you. Besides, there are very few of them; in fact so few that it has become necessary to admit members here who haven't any local associations—a good many of them. Now, then, if that portion of the constitution already read means anything, it means that this Association ought to be willing at least to do all it can do in the matter of ridding the profession of such objectionable persons against whom serious complaints might be made. Now, that is the thing I have in view. It is not that you should pursue them; it is not that you should go to their locality and prosecute them; it is that this Association may take some action that means something in that direction though we cannot any more than express our disapprobation of a certain line of conduct. We could do that much and it would be a great deal. It would mean one hundred times more than anything that could be done by some local county bar association that would not have a baker's dozen present at any meeting it might hold at any time in a year. Now, it is to take some action that will mean something that I want to call your attention. These difficulties—technical difficulties—that have been suggested here, do not count for anything and this Association never ought to take a stand where it will say, "We will not take cognizance of any complaint against a man practicing law in this State if our committee's attention is properly called to it, simply because he isn't a member of this Association. Now, that is not proper. We are a very high-toned Association. We hear it almost everywhere. We say so ourselves, and it will probably be said before this meeting is over. In

fact, we have a very high-toned code of ethics that not one of us understands, and why isn't this strictly in line with that? In other words, why break aloof from this thing when by the merest suggestion from this Association you can condemn a certain line of action—condemn those things when they come before you properly; and if you do just that much, gentlemen, you will have accomplished a great deal, and that is my only purpose in making this committee, if complaints are properly brought before it, take them up and investigate them and let us have them reported here. It does not need to do anything; it does not need to take any action; and if after it presents them to this Association it does not feel like taking any action let the matter go at that. But let us have it and let such action as is taken here be taken after proper consideration and with due respect to the matter and the rights of the parties. That is clearly right and within the purview of that constitutional provision that has been read.

**Mr. A. J. Valentine**: I should like to ask what force the report of this committee may have? It has merely been received and filed. Does it have any more binding force or effect upon this Association than a mere opinion expressed by one member of this Association would? If it does not, and it seems to me it doesn't, then I cannot see that the gentleman's motion is appropriate.

**Judge T. P. Jacobs**: I have no private opinion about this matter. The Committee on Grievances is a standing committee; it is a constitutional committee and it had constitutional and legal duties to perform. I am more concerned in being right now and in the future than having the Association concur or non-concur in the opinion of the committee. Before we can take jurisdiction—before we can take up and discipline an individual—we must have jurisdiction of the subject matter. Article 13 of the Constitution provides for a Committee on Grievances "which shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and report the same to the Association with such recommendations as they may deem advisable." By-law 12 regulates the manner of procedure of this committee and in fact determines what it shall do and how. It reads: "Any charges of unprofessional conduct against any member of the Association, if made in writing and signed by the person preferring them shall be investigated by the Committee on Grievances, who shall recommend to the Association such action as they may deem proper, but no action shall be taken by said committee or this Association without due notice to and the service of the charges upon the accused." There are two reasons why the committee would not take jurisdiction of this matter. First, there was no regular complaint, and second, the matters were outside of the jurisdiction, territorially, of the Association, all the things complained of occurring in another State.

**Mr. M. F. Snider**: I think perhaps there is only one little thing in this paper that is objectionable, and that is we do not want to put ourselves on record as saying that we cannot take jurisdiction of a matter pertaining to a member of the bar in the State who does an improper thing in the practice of the law. I think that is all. The committee's report concerning not having jurisdiction in this matter, is proper. I do not think we should take cognizance of this case and I do not think we should go on record so strongly as to say we cannot investigate any member of the bar in this State, if necessary, who is guilty of improper practices in his profession, because the local bar might not be able to meet it. It may become of State importance and when that time should arise, why, I think we should take charge of it; therefore the only thing that is in that report, I think, that any of us could object to, is making it so that the Association cannot take charge of a matter pertaining to a non-member of this Association.

**Judge T. P. Jacobs**: Just one suggestion: I do not want to annoy the Association and I agree with what Mr. Snider has said. That report as read and interpreted means this: that the Association through the channel of this committee cannot take jurisdiction of unprofessional conduct of non-members. Any member of this Association may introduce a resolution condemning any practice as unprofessional or illegal and may pronounce upon such matters; but for the purposes of an investigation or trial the committee were of the opinion it had no jurisdiction, and therefore the Association through the channel of this committee would have no jurisdiction to take cognizance of non-members and their acts but this Association by resolution might take cognizance of almost anything.

**Mr. W. W. Brannon**: Reading that report all together, as I understand, would be the proper manner in which to give consideration to the paper, and it seems to me it is unobjectionable. The report of the committee relates to that particular case, and if the committee has gone on and used some language not strictly applicable to the case it would not be binding upon this Association in any future case. We frequently find the opinion of the courts fraught with suggestions and remarks by which we do not feel found. We must look to the particular facts in a particular case and interpret the report of this committee as we would any report in the light of such facts. I have no doubt if a proper case should present itself wherein this honorable body should deem it necessary to investigate any particular practice in any particular locality of the State, that it would feel perfectly free to do so notwithstanding the report as it has been presented and received. I do not agree with my friends who are inclined to object to any particular part of the report, because I read it all together and taken in that way it seems to me to be unobjectionable.

**Judge H. H. Moss, Jr.**: Mr. President: While I am aware of the

fact that it may not be an entirely graceful thing for a judicial officer to speak on a subject of this character, yet it seems to me that if there is a subject which will come before this organization which is one of paramount importance, it is this. We read in the daily press throughout the country criticisms of the fact that lawyers will lend themselves to anything. We are under fire today, and here is a committee which reports that unless a man is a member of this Association his acts, no matter how unprofessional, no matter how injurious to the profession, must be overlooked by this Association. It will not do to say that. I respectfully submit that this Association can take this matter up on its own motion or on the motion of some member. These committees are organized for some purpose, and that purpose in this case is to take cognizance of the violation of professional ethics. It will not do, in my humble judgment, to say that this should be left to the local bar associations. They have, as has been stated, in a great many counties, no such associations; but, Mr. President, where they have such associations there is not one man in a thousand who has the nerve and determination to prosecute charges against a fellow member of the bar there in his own county. There is no question about that. We may hear of these charges—they may be hinted at—but it is very seldom that you will find a member of a local bar association who is willing to incur the ill will or who is willing to have his fellow member disgraced by taking a firm stand against these atrocities. It seems to me, with all due respect to the committee, that it is an evasion of duty for them to take the position that because a man is not a member of this Association, therefore this Association should, through its committee, ignore his acts no matter how bad they may be. It brings us back to the question, "What is this Association for?" Is it simply to meet here and be interested in these papers that are read and which are no doubt beneficial, or has it a higher object, and that is to elevate the bar and to make it a sign of honor at least to belong to it and an indication that a man has those honorable characteristics which every attorney practicing in the courts should have. If there is any organization or any individual in this State, outside of this Association who has or which has so much influence or would have so much influence in condemning things as this Association has, I do not know who it is or where the association is. One word of condemnation from this Association would do more good than a hundred words in the way of idle rumor passed around among individual lawyers. This Association by a resolution brought through its committee and not brought through an individual, could at least say to the man who is accused, "We will give you an opportunity to be heard before we condemn you;" and if that man does not then avail himself of that notice and of that opportunity, then let this Association condemn him; and I take it for granted then if there is a local bar association, that this thing having been pointed out to them they can, without very great difficulty, evade the responsibility. If, however, there is not some

high tribunal or some responsible party to point these things out, I submit that we are doing nothing that will accomplish the result intended. Now, there is no use concealing the fact that these violations are frequent. I venture to say in every town and city of any size in this State there is room for work of this kind, and while I do not feel that possibly I should have spoken on this subject, yet I think it of so great importance that I even am in favor, if it is necessary, of giving this committee specific instructions that the Bar Association of this State does wish these cases investigated and reported upon.

**President Mason**: Suppose in a case like the one cited that instead of appealing to the Committee on Grievances of the Bar Association they would appeal to the Judge of the court, wouldn't that be the better way?

**Judge H. H. Moss, Jr.**: Mr. President, I do not think any judge of the court would evade the responsibility if the case were presented to him but the judge of a court could not properly take jurisdiction unless it were brought before him like any other matter.

**A member**: Why shouldn't the the Martindale Agency have applied to the court instead of to a committee of the Bar Association?

**Judge T. P. Jacobs**: I want to ask Judge Moss if he expects the Committee on Grievances to act as prosecutor in such a matter.

**Judge H. H. Moss, Jr.**: That is exactly what I said I didn't expect. I said I expected the committee to report to the Association and nothing more after investigating the case and then fix a time for the matter to be heard.

**President Mason**: Why not let him appeal to the judge? When an attorney collects money—and that is the charge, I believe, here—and has not paid it over, why not bring it up in court in proper manner?

**Mr. John J. Coniff**: Then wont the court send him to a lawyer to prepare his petition properly for the rule?

**Judge H. H. Moss, Jr.**: There are a great many remedies. Each one of these gentlemen knows and all of us know that under the criminal law of this State a man must be proven guilty beyond all reasonable doubt and I do not think this Association wants to lay it down as a principle, in cases like this, that because you cannot prove a man guilty beyond a reasonable doubt, with all the technicalities of the law invoked in his favor, that therefore you will leave him to prey upon the public in this State.

**Judge M. H. Willis**: If none of the by-laws of this Association provides that this committee should make an investigation of the conduct of a member of the bar, after charges have been preferred against him, he not being a member of the Association, how could this committee investigate such charges?

**Judge H. H. Moss, Jr.**: I do not think the constitution means that

only members of the Association should be investigated. Certainly there is nothing which says that.

**Judge M. H. Willis**: Then let me inquire why it would not be better to change the by-laws of this Association rather than to adopt a motion here?

**Judge H. H. Moss, Jr.**: I take the view that the by-laws by merely prescribing the mode whereby members of the Association shall be prosecuted, do not exclude the action of the Association as to non-members.

**Secretary Peterkin**: It seems to me there is some misunderstanding as to what the committee did report. It says that the case to which their attention was called arose in the State of Virginia and that "the committee is of opinion that this Association has neither the jurisdiction nor the machinery to take cognizance of the matter of which the agency complains."

**Judge M. H. Willis**: Now, read the by-law.

The Secretary reads by-law No. 12.

**Judge M. H. Willis**: Now, there is no provision in there for disciplining non-members and that is what I object to.

**Secretary Peterkin**: As was suggested by Mr. Brannon the committee has expressed an opinion beyond the question that was immediately under discusion, and I think the discussion which has already taken place here will be sufficient to prevent the record, as it has been made up here, from establishing a precedent. Now, it seems to me while it is certainly true that this committee would have no jurisdiction to summon before them a man who is not a member of this Association, yet, as was suggested I believe by Senator Price, this Association itself would certainly have the power by resolution to direct any one to proceed in any particular county where there was no local bar association.

**Mr. W. P. Hubbard**: Why isn't this committee ready to report that, then? It says it cannot act.

**Secretary Peterkin**: The report says "it cannot go beyond its own circle to discipline its own members."

**Mr. W. P. Hubbard**: Some of us think it can. I am in favor of Mr. Coniff's motion but am against his speech. His motion is to strike out of this committee's report that declaration made by it that it has no power to do or say anything in a case of wrong doing by a man because he happens not to be a member of the Association. I think that ought not to be in the report. But Mr. Coniff goes on in his speech and insists, as I understand, that this committee shall take action in every case where complaint is made. I do not believe in that. I think Mr. Snider put his finger on the exact trouble here which is the declaration in that report of the committee that it can do nothing if the man against whom complaint is made happens not to be a member of the Association or is careful not to be a member of the Association. Now Mr. Brannon and again the Secretary seek to

excuse this expression of the committee on the ground that it is **obiter dictum.** This is the first time when I have had the luck to be present at the birth of one of those monstrosities which are called **obiter dicta.** I want this Association to smother it the very first moment possible and I do not think as put in that report it is merely **obiter dictum.** I read it in that report as one of the reasons given by that committee why it has not acted in that particular case. I agree that the committee should not have acted in that case. I think that Judge Jacobs has been under a misapprehension in supposing that some part of what has been said by Mr. Coniff and others is intended as a criticism of the action of the committee in that particular case. I do not so understand it. I think we all agree that the committee did just what was right. I think this constitution leaves this committee free and that it gives it the power to act against a non-member and that the general grant of power given by the constitution is not affected in any way by a by-law which merely relates to the method of trial of a member of the Association. The constitution says, "The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and report the same to the Association with such recommendations as they may deem advisable." All complaints, not merely those that are made by our own members; not merely complaints that relate to mal-administration and charges by those who happen to be members of this Association, but all complaints; and this committee is directed to receive all complaints from whatever source, and if the committee thinks action ought to be taken it certainly has the power under this to do whatever ought to be done. It may consist merely in the expression of an opinion by that committee.

I am not of those, Mr. President, who hold that it is irregular to adopt a report in a body such as this merely because that report does not contain a resolution. There may be declarations of belief on the part of an Association like this which cannot be better expressed than in a report of a committee—a report that cannot be better dealt with than by adopting the report as a report, and if this report as drawn were in accordance with my belief of what ought to be settled, I should be in favor not merely of receiving and filing the report but of adopting it as a statement of the views of the Association on a question of this sort; but I think with those words out of that report that Mr. Coniff's motion proposes to strike out, then by reference to section 13 of the Constitution we will find that this committee has the power to receive all reports and has the power to deal with them as they think is right. If the matter complained of originated where there is a local bar association, or if the way is open for it to be complained of to the circuit court of that county for redress, the committee will merely say, "To one or the other of those places you should go;" but it is not difficult to imagine cases where no such remedy is at hand to a person who may be seriously injured; and. as has been

suggested, troubles of this sort, simple in their origin and local in the first place, may grow to be very serious questions affecting the administration of justice throughout this State, and I am not willing to have this Association directly or by implication say through its committee that it is without power to inquire into these matters and to deal wth them where advised at the time they ought to be dealt with.

**Judge M. H. Willis**: I may misapprehend the nature of the motion that was made and I would like to inquire what the motion is.

**Mr. John J. Coniff**: The motion was to strike out that part of the report which is contained in the sentence that the committee believes it has no jurisdiction to discipline members of the bar outside of this Association or to consider the grievances of persons outside of this Association.

**Judge T. P. Jacobs**: How can this Association discipline a non-member?

**Mr. George E. Price**: That was just the point I was going to call the attention of the Association to and I think the language of this report has been misapprehended. It says, "The committee is of opinion that this Association has neither the jurisdiction nor the machinery to take cognizance of the matter of which the agency complains."

**Mr. John J. Coniff**: That last sentence is the one I want stricken out of the report by my motion.

**Mr. George E. Price**: If the language is to be interpreted in its strict meaning, that would mean that this committee as the representative of the Association could not undertake to administer discipline in the way of expulsion. I do not think we disagree at all, Mr. President, upon the general proposition that this Association has the power and it is strictly within its province in any matter of sufficient importance—which is not merely local in its character but becomes of sufficient importance to demand the attention of this Association as a State Association—to have it investigated either through a standing committee or a special committee, and take such action as we think proper; but I think every one must agree farther that this standing Committee on Grievances cannot be expected to entertain and investigate, as it would have to do, Mr. President, to make any report to this Association that would be worthy of lawyers—that that committee cannot undertake to investigate charges of misconduct merely local in their character.

**Mr. W. P. Hubbard**: Pardon me: doesn't Mr. Coniff's motion have that effect?

**Mr. George E. Price**: That is the point to be guarded against. We on our side don't want our action to be interpreted as imposing upon this committee or to be understood throughout the State that we have a committee in this Association whose duty it will be, upon every complaint made from local sources, to entertain the same.

**Mr. Nelson C. Hubbard**: Let's take a vote on that.

**Mr. M. F. Snider**: Permit me to ask you a question, Mr. Price. Aren't all these complaints local?

**Mr. George E. Price**: And do we want to investigate all of them?

**Mr. M. F. Snider**: If the committee should say they are such as should be investigated they certainly should be investigated. Let them turn the matter over to the Association and let the Association say whether they should be investigated or not. They are all local.

**Mr. George E. Price**: Now, Mr. President, you can see where it leads. Here is a man outside of this Association charged by somebody else outside of this Association with some offense, say, in the city of Wheeling. Judge Jacobs lives at New Martinsville, I live at Charleston, and the other members of the committee are scattered about the State and somebody sends a complaint to Judge Jacobs that some lawyer in Wheeling has been guilty of unprofessional conduct. Are the members of this committee to get themselves together and go to Wheeling to investigate the charges?

**Mr. W. P. Hubbard**: Nobody proposes that the committee must do a certain thing; the objection is to the committee saying it cannot do anything.

**Mr. George E. Price**: Well, can it? Can this committee go to Wheeling and call a gentleman who is charged before it and say, "You are charged with this offense and we want to know what you are going to say about it?" Suppose he don't come and suppose the other gentlemen come and offer evidence to us. Can we then come to this Association and make a report making a charge against some lawyer in Wheeling over whom we have no jurisdiction and thereby perhaps do him a very great injustice after he has declined to be heard before us? Isn't that a matter certainly that must be brought before the courts and investigated there? Isn't it strictly true, as stated in this report, that this committee has no machinery by which it can investigate and make such a report as will, perhaps, not do injustice to somebody over whom we haven't jurisdiction? I think, Mr. President, that the proposition of our friends goes too far; I do not think that this standing committee can investigate charges of professional misconduct against a member of the bar who is not a member of this Association simply upon charges being lodged with the committee. If that is to be done in any particular case and it is of sufficient importance, let it be brought before this Association and let special instructions in such a case be given to the standing committee. That is my position and I think it is strictly true, that this committee cannot go beyond its own circle and undertake to discipline non-members.

**Judge T. P. Jacobs**: I apprehend from the discussion we have heard that there is not very much difference of opinion between us. The objection seems to be to the language rather than to the idea. Now, in the interests of harmony and that we may get entirely right,

I suggest that the Association will let that committee have that report until tomorrow morning and possibly a sentence can be added which will take away all this bone of contention.

**President Mason**: I can see how that matter can be arranged and you can take it, if there is no objection, and submit the report in the morning.

**Mr. Nelson C. Hubbard**: I want to find out just how the Association stands on the general principle we have just been talking about. We do not care anything about this particular case, of course, and it is well enough to say that the constitution has clearly provided that this committee may take up a matter arising in the case of a non-member; but suppose the Committee on Grievances only has two members present and they take a contrary view and these matters do not get before the committee and therefore do not get before the Association? Now, if we are divided on the question of constitutional interpretation, we have got to get the constitution and by-laws together and make them so plain that even the most unwilling member of the Committee on Grievances cannot fail to see that his committee ought to consider matters arising in cases of outside members. I move you, then, sir, that the Executive Council—meaning by that of course the old Executive Council—be requested to prepare and submit at the beginning of the afternoon session tomorrow such an amendment to the constitution and by-laws as will prescribe the proper procedure for the Committee on Grievances in the case of a complaint properly made with reference to a non-member of the Association.

**Judge H. H. Moss, Jr.**: I desire to offer an amendment to that motion: "Resolved, further, that it is the sense of this Association that it is the duty of the Committee on Grievances to investigate and report to the Association all charges of unprofessional misconduct on the part of any lawyer practicing in this State when such charges are submitted to said committee in writing and are signed by the person or persons making them."

**Mr. Nelson C. Hubbard**: I think if that resolution is desirable it properly should come in ahead of mine.

**Mr. George E. Price**: I move that the resolution be referred to the Executive Council along with the motion of Mr. Hubbard.

Which motion was put by the chair and carried.

**Mr. E. M. Showalter**: Before adjournment, I want to request all of the members of the Association, if there are any here who have not already registered and received tickets to the banquet, to come here to the desk and register immediately after adjournment.

On motion the Association took a recess until 8:15 p. m.

## FIRST DAY: EVENING SESSION.

The Association met at 8:15 p. m.

**President Mason**: The next order of business is the report of

the Committee on Legal Biography, Colonel Robert White, chairman.

**Secretary Peterkin**: Colonel White has been unavoidably detained but he has sent his report by mail, which I will read.

**Report Of Committee On Legal Biography.**

As to Ex-Gov. E. Willis Wilson. (See Appendix VII.)

**President Mason**: What shall be done with the report? If there is no objection it will be received and filed.

**Mr. E. M. McPeak**: I notice that the report of the Committee on Legal Biography refers to Governor Wilson as being the only member of the Association who has died during the past year. I desire to call attention to the fact that Mr. J. K. Koontz, of Fayette, a member of this Association and an able lawyer, has died since the last meeting, and that fact should be noticed in some way.

On motion, Mr. McPeak was requested to furnish the secretary with a sketch of Mr. Koontz to be included in the report of this meeting.

**President Mason**: The next thing in order is the report of the Committee on Legal Education, Dr. St. George T. Brooke, chairman.

(Report of the Committee on Legal Education see Appendix VIII.)

Mr. Peterkin moved that the discussion of the report be made a special order immediately upon reassembling on Friday morning; which motion was carried.

**Mr. James C. Frazer**: I may have some remarks to make upon that report and I hope that all members will consider the matter carefully and that in the morning we will hear from many of them.

**President Mason**: Gentlemen, it affords me great pleasure to introduce to you a distinguished gentleman now residing in the city of Washington, a justice of the supreme court of the District of Columbia, formerly a judge of the supreme court of Vermont, the Honorable Wendell P. Stafford, who will now address you.

At the conclusion of the address on motion of Mr. George E. Price, the thanks of the Association were tendered Judge Stafford, by a rising vote, for the very able and eloquent manner in which he had entertained the Association, and he was requested to furnish a copy of the address for publication in the proceedings of the Association. (See Appendix IV.)

On motion the Association adjourned until tomorrow morning at 9:30 o'clock.

## SECOND DAY: MORNING SESSION.

The Association met, pursuant to the adjournment of last night in the circuit court room at Fairmont and was called to order by President Mason.

**President Mason**: The special order for this morning is the discussion of the report of the Committee on Legal Education. That

paper presents quite a number of questions that are worthy of the attention of the Association and I would like to hear the views of the Association upon them.

**Judge T. P. Jacobs**: In order to get the matter before the Association I move that that part of the report relating to legal education and admission to the bar be referred to the Committee on Legislation for proper action.

**President Mason**: The motion is that the portion of the report that refers to admission of members of the bar be referred to the Committee on Legislation for action.

**Mr. George E. Price**: Mr. President: Doctor Brooke, the chairman of this committee, has expressed himself both publicly and privately as being anxious to have an expression of opinion from this Association upon the main question which is discussed in the report of that committee. That question, as I understand it, is whether the board of examiners which, under the regulations adopted by the supreme court of appeals consists of the law professors at the University, has the right or power or whether it is expedient for it to prescribe an academical educational test for candidates for the bar who present themselves for examination. I do not know whether the question goes to the extent of suggesting whether the University professors have the right, when a man comes to the University and applies there to take the course, not for a degree, but to prepare himself for the bar examination—whether they have the right to prohibit him from entering upon the study of their law course unless he shows himself possessed of certain academical attainments. But these are questions which seem to be troubling the board of examiners consisting of the law professors at the University, and if the members of this Association have any clearly defined views upon that question I think they have the right—as they are members of this Association and as it is a matter the Association has always dealt with—to ask for some expression of opinion on that question, and without having any very clear view upon it, Mr. President, myself, I have felt impelled to at least say enough to open a discussion upon that question.

Now, I confess, sir, that I do not exactly understand the difficulty in the way of the law examiners. Certainly it seems the difficulty could be gotten rid of so far as those students who apply at the University to take the course and prepare for the bar examination, are concerned. It seems to me it is going a long ways for the professors there to lay down an educational test for that class of men; it seems to me they have it within their power to subject those men to the very best tests possible in order to determine whether they are properly qualified to come to the bar or not. What difference does it make whether a man has had a high school education or a collegiate education if he is unable to comprehend the law lectures of the professors and to stand the examinations and tests to which they subject him

during the session? They have their examinations two or three times a year; they have an examination, as I understand it, just before the Christmas holidays, in certain of their branches. Now, at that examination and at the various tests they make before that examination, they certainly can pick out the men who are doing the work and who are comprehending what lessons have been taught, and can tell early whether the man is going to make a lawyer or not, and if necessary they can advise him that he had better quit and go to a high school and get an education and qualify himself so that he will be able to comprehend the abstruse and difficult propositions which the lawyer has to contend with; so that as to that class of students it does seem to me, Mr. President, that the law professors will make a mistake if they want to stop our West Virginia young men from going to the University and taking that course by saying, "You have got to come here with some kind of an academical education in advance." Many a man has acquired an education by the very study of the law itself and by contact with educated men at the University and with the other students there—has gradually educated himself and by the end of the term knew more and was better equipped than others who had better advantages. Then it comes down, as we were told last night, very often to a question of brains and common sense rather than of attainments. But, sir, the question is a different one when a man goes out there to the University simply to take an examination for admission to the bar. That man—that mere examination that he may take is very often not a very good test and he may be able, possibly, to answer a certain percentage of the questions that are propounded to him and enough to entitle him to their certificate that he has passed the necessary examinations, which will enable him to go to the supreme court and get his license to practice when he is utterly disqualified. I am inclined to believe, sir, that for a man who goes in the first place to take simply the bar examination, the law ought to require that he shall give evidence of certain academic education or that he has successfully attended some law school somewhere else for a certain period of time. The attendance upon law lectures and the taking of a law course for two years is an education in itself and the man who has gone through that perhaps has got what would be supplied by an academic education in other branches. The modern notion of an education does not necessarily mean that he is to begin and follow some old prescribed curriculum, but any mental training that will enable him to develop his faculties along any line, scientific or otherwise, may be sufficient, therefore, if he presents to the board of examiners evidence of the fact that he has attended a law school and has got a certificate to show that he successfully passed the examinations of a reputable law school after being there two years, or if not, then that he has had a certain academic education and has been studying law for a certain period privately, some test of that sort, I believe, ought to be required of the

man who has not furnished the board of examiners themselves, by his attendance upon their classes, evidence of the fact that he has the necessary mental discipline and attainments to become a successful lawyer. Now, these are very crude views and I do not know whether they are practical or not, but something like that has occurred to me in thinking over this matter.

**Mr. M. F. Snider**: Mr. President, it occurs to me from the reading of Doctor Brooke's paper that that matter should be left with the examiners who are members of the faculty of the University. Since the supreme court has seen fit to turn over to them the testing of a law student by examining him in the branches that are required, I think that the educational qualifications should also be left to that faculty, or those examiners, and left entirely to them. I do not know that the supreme court prescribes just what questions should be asked and what examination the faculty of the University are expected to give to these students who come to be examined and who do not take the full course, and if that is left to the professors to test them by such questions as they think are proper, the other question should be left with the professors to test their educational qualifications; and as to the reference in Doctor Brooke's paper that they thought they would test it at one time by sending up a certificate on the back of which was written by one of the examiners that they did not think the applicant had sufficient educational qualifications, I submit that that was not a good test, because two of the examiners had already signed the certificate and it was not brought before the supreme court in a way in my judgment that the court would act upon it; but if all the members had refused to sign the certificate and had placed that endorsement on the back of it, then the supreme court would have acted upon it, perhaps, in a way to give the examiners an idea about it. I think it ought to be left to the examiners. If you leave one part of it to them leave all of it to them and let them require the test.

**Mr. W. P. Willey**: The question before the commission is this: that the supreme court prescribes the test but it don't make any academical requirement whatever.

**Mr. George E. Price**: What is the test?

**Mr. W. P. Willey**: That they shall be examined over the whole course of law prescribed in the law school of the University. It does not refer to any academical test whatever; and whether the commission has the authority to include that in the test that is given the candidates, is the question at the law school.

**President Mason**: If I understand you some of them answer in the right word but do not spell it correctly.

**Mr. W. P. Willey**: And they do not always get the right word. The difficulty with the examining board is simply whether they have authority outside of the specific test prescribed by the supreme court to include an educational test; whether they ought to do that. It is

mortifying to say that there are men who come into the law school who master the law and who can pass a very good examination in crude English on the principles of the law, yet they murder the king's English most unmercifully. They are uncouth in their get-up generally; they are very crude outside of their study of the law; and whether we are to look into that—whether we are to take that into consideration as a commission acting under the supreme court, with the test of the supreme court laid down and prescribed for us—is a difficult question with the commission.

**Mr. W. W. Hughes**: I do not want Doctor Brooke's paper to pass without calling attention especially to one of the features of it. While it may not be so important in this part of the State we do notice it in the extreme southern part of the State where a large part of the increase to our bar comes from Virginia where the standard is high but we have some instances where it comes from Tennessee and Kentucky where the standard is extremely low. I have in mind now the case of a young man who came into McDowell county and clerked a while in a drug store and then took a notion to study law. He consulted with me about taking a course at a State University and I advised him to go to our State University. He said he could get through by going down in Tennessee in about six months and that he could go down there and take the course and come back here and practice. Now, I understand if he had been a citizen of this State he couldn't do that. Our legislature at the time it amended that feature of the law provided that a person could not go out of this State into another State and pass an examination and then come back to this State and practice without an examination, but it didn't fix it so a citizen of another State couldn't pass an examination in that State and be admitted there and then come here. This man knew that was a fact, so he never changed his citizenship to this State but claimed that he was a citizen of Virginia. He had only been in this State a few months, clerking in a store; so he went down in Tennessee, staid a few months, was admitted to the bar in Tennessee and then came back to McDowell county and went to practicing after having had only four or six months actual training in law. It occurs to me there is a very weak point in our statute as to the qualifications admitting a person to practice law when a citizen of another State can come here and be admitted in such a way as that. Our legislature has made it so a citizen of this State could not do that but left the gates open to citizens from other States. They can be admitted in the State of Kentucky, for instance. All they have to do is to stay there a little while, be admitted to practice and then come over into West Virginia and go to work. The same is true as to Tennessee. It seems to me that that feature of our law is weak and it should be remedied. Now, I know of another instance over in Buchanan county, Virginia, where a few years ago attorneys were very scarce. A man was admitted into the Kentucky courts under circumstances

similar to those I have previously related. He came over and went to practicing in Buchanan county. There was no one there to look after him. Recently there has been quite a development there and a great many other attorneys came in. This man was not conducting himself as they thought he should and they proceeded against him as not being properly admitted in the Virginia State courts. After some delay he was finally disbarred at the last term of the Buchanan court. He was a regularly admitted attorney in the State of Kentucky but he had not complied with the requirements of the State of Virginia. Now, if he had come to our State instead of the State of Virginia he would be still practicing unless disbarred for other reasons. In Virginia I understand the rule to be that it is left with the supreme court entirely; but where our attorney has been practicing for three years in another State then the supreme court may allow him to be admitted in that State without the usual examination; but unless he has been practicing for three years in some other State he must take it. He may be excused from it after that time. So I think that feature of Doctor Brooke's paper is worthy of our notice and worthy of some action. Doctor Brooke's suggestion is that after a man has been identified with the practice of law for three years in another State, then he may as a matter of right, be admitted in this State. The Virginia practice, I understand, is different from that. They simply say he may be admitted after that time and it is left with the supreme court. So I think this is very important and should not be overlooked.

While I am on the floor, referring to that case in Buchanan county, Virginia, I would like to go a little farther into that proceeding as it bears on the point before the Association on yesterday. This party, as I said, was proceeded against some three or four terms back. The matter was subject to many delays. No judge cared particularly to act in it. Finally, some one got rather tired of the matter and wrote the State Bar Association—laid it before the State Bar Association. I do not understand that the Association attempted to summons that man before them but they did take such action that the circuit court of Buchanan county realized that the Virginia Bar Association did not approve of any such conduct, and about the first session of the court after the meeting of the Virginia Bar Association that man was disbarred; so that while he was not a member of the Virginia Bar Association, yet that Association did take jurisdiction of his case in so far as to say that they did not approve of any such conduct. They did not attempt to punish him or any thing of that kind but they signified their disapproval of his conduct. I thought while I was on the floor I would mention this matter as simply bearing on the point that was before this Bar Association on yesterday and will be before it again today. The other questions mentioned in Doctor Brooke's paper I do not care to say anything about; but being from the extreme southern part of the State and knowing of the circumstances existing in that part of the State, I thought it best

to call attention to this other feature of Doctor Brooke's paper so that it might not be passed over unnoticed, for I deem it very important.

**Mr. Harvey F. Smith**: I am heartily in sympathy with that feature of the statement made by my brother who just took his seat relative to the standard for the practice of law in this State—that is to say that other feature than that which is immediately controlled by the law board at the University—but instead of three years, as expressed by Doctor Brooke, I think it should be five years for the admission of a practitioner from another State who is admitted by courtesy in this State. I think that is a sufficiently short period in which to make such an admission and I seriously think that something should be done to protect the University student and that something should be done promptly. I do not believe that it is proper encouragement to the University students, wherever these people may have been attending school, to leave this other side of the gap down and let men come in who are in one sense and one sense only, competitors in the practice. I have some knowledge of these matters having been one of the first admitted by the examination of this worthy board. I have some idea of the standards required by them. All of us who are practitioners have some idea of the standard of admission for those who have come in by some other States, as referred to by the gentleman who just took his seat. We can never attain the standard which it is our desire to attain until the board is protected in the examinations which they hold for admissions, and I sincerely think this body should put itself on record as requesting whatever additional legislation this board may recommend relative to that other feature of admission which certainly is not satisfactory to any of us—not satisfactory because it does not require any standard which in any way meets the approval of the board which has shown such a decided disposition towards a higher standard in this respect.

**President Mason**: Are there any further remarks?

**Mr. John J. Coniff**: Mr. President; it seems to me there is a degree of selfishness in Mr. Smith's remarks that the University student should be put under the special care of the examining board as well as the bar. I do not think that is the idea at all and I do not think the suggestion of five years meets the trouble. Abe Hummell has been practicing in New York for twenty-five years, I believe, and I am afraid after he spends his year in jail for his rascality as a lawyer he might find West Virginia an inviting and safe place in which to settle. It seems to me we should do something more for our protection. Presuming that a man has practiced three, five or ten years in some other State, I think the law is lax in not requiring some other qualification so that we can take care of the Abe Hummells who might drift into this State. Now of course that is guarded against in some degree by qualifications for admission but I believe the prac-

tice is in some instances to admit just for a single case. I never knew what authority there was for that, that permitted a judge to admit a man to practice before his court simply for the time. Now, should there not be something that would at least put it in the power of the judge to limit that thing?

**President Mason**: The courts do not limit it and that perhaps is one of the defects in our law. Under our statute a person who is a practitioner in another State isn't sworn in here. One of the troubles seems to be with the party who has come to this State and not become a resident and who has then gone out of the State and got his license and has come back here to practice.

**Mr. John J. Coniff**: Yes, sir; and we want to cover his case because he is certainly evading the law by seeking an examination that perhaps might be easier than the one he might have to stand here. That is one of the great difficulties we are confronted with. We have more of it now and will have more of it in the next ten years than ever before. The whole country has been attracted to West Virginia by its development and of course it is furnishing a splendid field for lawyers from other States and many of them have come into West Virginia to locate. It seems to me we fall very far short of requiring proper qualifications by simply providing that if such lawyers have practiced three years or five years or ten years in other States they may be admitted here. The fact is we ought to be more strict with non-resident lawyers than we are with our own if that were possible. Now, you know of West Virginia boys who grow up and aspire to become lawyers—characters well known; disposition well known; qualifications well known and they get a certificate from the county court of good moral character etc. Now, nothing of that kind is required of a non-resident, and it seems to me that the committee on legal education might very well recommend something more substantial than that a man shall practice three years in some other State. Now, as to the other feature of the paper, that is a more difficult question.

**Mr. Harvey F. Smith**: Will the gentleman yield and let me ask him a question? I heartily agree with what you say and would like for you to suggest a remedy.

**Mr. John J. Coniff**: The remedy I would suggest would be—and this would be in opposition to some of the ideas that have been expressed here—that we do have jurisdiction of the fellow who comes in from another State, and if Abe Hummell should come into West Virginia it could get after him and prevent him from practicing law here.

**Mr. George E. Price**: Let me ask if Abe Hummell is practicing law in New York after his indictment and conviction?

**President Mason**: I understand his qualifications have been submitted to a grand jury.

**Mr. George E. Price**: Now, isn't it likely he would be disbarred in New York and therefore couldn't come to West Virginia and be

admitted here as a member as coming from the New York bar?

**Mr. John J. Coniff**: Suppose Abe has his trunk packed and leaves the jail and comes to West Virginia without any disbarrment proceedings having been taken?

**Mr. George E. Price**: Then we would arrest him and have him committed to jail until we could send him back.

**Mr. John J. Coniff**: Yes; but you are already committed to the proposition that we haven't jurisdiction over him.

**Mr. W. P. Willey**: Mr. Coniff, I would like to ask you what you would do in Ohio county? Don't you appoint, or doesn't your judge there appoint a committee to investigate the man who applies from another State to be admitted to practice?

**Mr. John J. Coniff**: If Abe Hummell should come to Ohio county and it became known in any shape or form that he was going to be presented to the judge for admission, why, a meeting of the Ohio County Bar Association would be called very promptly and he would never get that far if we could prevent it.

**Mr. W. P. Willey**: I am not speaking of Abe Hummell particularly but I am referring to anybody who comes from a foreign State. Wouldn't the judge appoint a committee to investigate his credentials?

**Mr. John J. Coniff**: Our judges distinguish between the fellow who comes to try a single case and the man who comes and asks for permanent admission.

**Mr. W. P. Willey**: It is the latter I am referring to.

**Mr. John J. Coniff**: Well, he is investigated.

**Mr. W. P. Willey**: That is the practice in Ohio county but it is not over the State.

**Mr. John J. Coniff**: Well, we are lucky.

**Mr. George E. Price**: I would like to ask the gentleman this question: Doesn't our constitution recognize a distinction between a lawyer coming from another State who simply comes here for some purpose in connection with his profession, as the trial of one case, for instance, and the one who comes here to reside permanently and practice? I think it is necessary for the former, in order to be admitted, to sign a different oath from the other man. I think that oath requires him to support the constitution of the United States and not the constitution of this State and isn't that the reason that the courts draw a distinction? There are two oaths in the statute—one for residents of the State who are required to take an oath to support the constitution of this State and of the United States, and then there is another oath which I have always understood was the one required of a non-resident lawyer who happened to be here, for some business, temporarily.

**Mr. John J. Coniff**: Well, I have said all that I care to say about that feature of the report.

**President Mason**: In many of the States where an attorney ap-

pears simply to try a case, no oath is required at all; he simply appears by courtesy and is permitted to try that case without any oath being administered to him.

**Mr. John J. Coniff**: As a rule that man is under the guardianship of one or two local counsel during the trial of the case. Now, as to the other feature of the paper it seems to me it presents a difficulty that is very apparent. Are we more concerned as to whether an applicant for admission is able to spell correctly, or write grammatically or display some knowledge of history, and perhaps tell what is the highest mountain in the world and when the last battle of the revolution was fought, or—

**A Voice**: Or Fort Henry.

**Mr. John J. Coniff**: Or Fort Henry; and where Fort Henry is. Are we more interested in that than we are in trying that young fellow to find out whether he has good common sense? I thing the distinguished speaker of last night made that very clear. What will you do with that class of clients that Judge Stafford spoke of last night as having come to him during his experience and who displayed more innate knowledge as to the relation of things and more natural, good, hard sense as to common justice than the most trained lawyer. In fact the judge said they displayed so much on certain occasions that he felt like telling them they need not come to him. What are you going to do with that class of individuals? A friend of mine told me last night that he got a letter from a lawyer in this State who spelled "sir,"—"s-u-r." Well, if I had managed or arranged the spelling of that word originally that is the way I would have spelled it; that is the way it ought to be spelled; that is the way it sounds. Now, that is a serious question as to choosing between the fellow who cannot do these things and the fellow who can. I tell you, gentlemen, the fellow who has good common sense ought to be permitted to take his examination every time. Judge Stafford emphasized the fact last night that if he hasn't got it, and if you send him back to school to get an education, that education would likely emphasize his lack of common sense, and that is the rule the world over. So that from whatever point you view this thing you have to come back to the common sense test. If he has got it, when he applies for admission why shouldn't he be admitted? That good common sense of his will educate him, and if he hasn't good common sense and you send him out for an education, that education will only emphasize the lack of it and make a fool of him and he will never be fit for anything.

**Professor St. George Brooke**: The point I would like to get at is how is the commission to find out whether he has good common sense or not.

**Mr. John J. Coniff**: That would depend upon the common sense of the board it seems to me.

**Mr. W. P. Willey**: When they only see him a couple of days do

you think they can find out whether he has good common sense or not?

**Mr. John J. Coniff**: Well, keep him there until you do see him long enough to find out.

**A Voice**: And pay his hotel bill?

**Mr. John J. Coniff**: And pay his hotel bill if necessary; but perhaps it would be better to let him pay his own hotel bill. I am quite satisfied that any student would be glad to pay his own hotel bill if you gentlemen were satisfied, after you had turned the X-rays on him sufficiently, that he was all right. I am satisfied that he would be willing to stay there two or three weeks with you, and associate with you, and play cards with you, if necessary, so you could finally size him up. That is better than spending two or three years at some college and coming back. You would not have any more evidence of his common sense then except that his two years education might make it clearer that he hadn't common sense. That is the question, gentlemen, it seems to me it is very difficult to solve, but as to choosing between educational qualifications and common sense I am in favor of common sense every time. Look over this membership here and count the gentlemen who left the farm with all they had on earth on their shoulders, who have come into the larger towns and cities of this State and have distinguished themselves as no educated lawyers have distinguished themselves, and you will not find great difficulty in solving this problem. I could point you out here in this crowd a gentleman who left the farm and came to Wheeling. He carried under his arm all that he had on earth and I have no doubt but at that time he spelled "sir"—"s-u-r."

**A Voice**: Sure.

**Mr. John J. Coniff**: Yes, sure; and that gentleman has distinguished himself not only as a lawyer but he has held one of the highest offices in the State of West Virginia. Now, there is an example worthy of consideration, when you come to settle this question of what sort of an educational test is required, and I think we are driven back to common sense, gentlemen, no matter from what point you view this thing.

**Mr. Terrence D. Stewart**: This is my first attendance at a meeting of the Association and I trust you will pardon me for a few remarks. I believe this is the greatest question before the Bar Association at this meeting or that will be before it at any future meeting for sometime to come, unless properly settled. This whole question grows out of an effort on the part of the law faculty, which has been designated as a board of examiners, to raise the standard of legal requirements in this State; and right at this time I want to say that I endorse heartily what Brother Price, from Kanawha county, said in opening this discussion. Now, this is no new thing in West Virginia, and other States are doing the same thing. Pennsylvania and various States have taken this matter up in years past and they are experien-

cing the difficulties, it seems, that we are experiencing. In Pennsylvania, for instance, the supreme court has left it to the various bar associations to fix the requirements. There is a provision in the statute of Pennsylvania which simply provides that graduates of the law department of the University of Pennsylvania shall be admitted to practice in any of the counties in that State. Now, in Allegheny county, for instance, the Bar Association adopted a plan a few years ago of making admission practically prohibitory and keeping out everyone and they have carried that on to a considerable extent; but sometime since a young man who had graduated at the University of Pennsylvania came over at the time set for examinations, and was refused admission or turned down after his examination by the local bar in Allegheny county. He carried his case to the supreme court and that court said he was entitled to practice in any court in the State and should be admitted in Allegheny county. Now, it is a perplexing question with them what position they are in and whether they have any standard in Allegheny county. And the same thing is going to be true with us. Now, I do not want to make any extended remarks on this line but I want to offer a resolution. I want to say, though, first, that the effort in this State so far as I have observed has not been productive of the best results in that respect, and that I am heartily in sympathy with any movement that will have a tendency to raise the standard of the legal profession; but at the same time it is certainly true and we must all admit that educational requirements alone will not do that. They never can be made to do it and we must look to something else; we must take other things into consideration. I want at this time to endorse what my brother on the right, (Mr. Coniff) has said along this line. You may take a boy who comes from the farm who has good common sense and has in him the elements of a future lawyer. He ought not to be unjustly and unfairly treated by the board of examiners who examine him, because he has not had twenty-four, thirty-six, forty-eight or some other number of courses in some other school accredited by the West Virginia University. It is a fact within my knowledge of the workings of this plan at the University that young men have been graduated with the higher degrees of the University, who, I may say, and without apology, are a disgrace to the legal profession so far as legal learning is concerned. Now, I want to offer a resolution of this nature. I do not believe, as I might say, that we are prepared right at this time to settle the question, outside of a comparatively few who have thought about it heretofore and who reside at or near the location of the University, and they have probably given it no very great attention. Now, it occurs to me the best plan of getting at the matter is this and I will offer a resolution to this effect: That the Committee on Legislation to be created by our incoming President take this matter up with the supreme court of the State and with the board of examiners at the State University—the law faculty, in

other words,—and after a conference and going over the matter that these three bodies—this legislative committee, the supreme court and the board of examiners recommend in the shape of a bill to the next legislature a more definite method of procedure in the matter of admission of candidates for the bar in the State. I offer that as a resolution.

**President Mason**: It is moved that the resolution be referred to the Committee on Legislation with instructions to take proper action upon the same. Are you ready for the question?

The motion was put by the chair and carried.

**President Mason**: The next regular order of business is one I am sure that you will all enjoy. We have with us this morning our first President General Joseph Sprigg, of Cumberland, Maryland. The General was our Attorney-General from 1871 to 1873 and when this State Bar Association came into existence, in 1886, he was made its first President. Most of us have grown older since then but the General seems to have grown younger. I will let him speak for himself.

(For General Sprigg's address, See Appendix V.)

**Mr. B. S. Allison**: I desire to move that the thanks of this Association be extended to its highly esteemed father for the able address to which we have just listened and that he be requested to furnish the manuscript of the address for publication in the regular report of our proceedings.

The motion was propounded by the chair and carried.

**President Mason**: The next paper is "A Retrospect" by Mr. W. P. Hubbard of Wheeling, who needs no introduction.

(For Mr. Hubbard's paper, See Appendix VI.)

**President Mason**: Gentlemen, it is now the hour for luncheon and I think it would be well for us to take a recess.

**Mr. John Bassell**: One moment; I move that Mr. Hubbard be requested to furnish a copy of the admirable paper he has just read for publication in the proceedings of the Association.

The motion was put by the chair and carried.

On motion the Association took a recess until 2:30 p. m.

## SECOND DAY: AFTERNOON SESSION.

The Association reassembled at 2:30 o'clock p. m.

**President Mason**: The next order of business will be any discussion that may be had relating to Mr. Hubbard's paper.

**Mr. T. N. Parks**: Mr. Chairman: During the discussion that has preceded Mr. Hubbard's paper and during the reading of the other papers since this Association commenced, there has been a growing conviction in my mind as an observer—because I have not taken any active part in these discussions—that this Association needs one thing: and I want to offer a suggestion that was merely confirmed in my own mind when Mr. Hubbard was reading his paper. There has cropped out on the part of the older members, who have been

with the Association—some of them from the beginning—the idea that the Association has not accomplished the work it ought to have done. Now, I believe that is due to two things, and the first is the short time the Association is in session. Instead of giving full consideration to a question here we refer it to a committee, and, as has been said, it goes to sleep. Now, there is one apology I think that can be made for committees and it suggests a trouble which ought to be remedied if possible. I suppose they are busy men. Of course all lawyers have means. But if possible the finances of the Association ought to be brought up so that these committees could have placed at their disposal a sufficient amount of money to pay for correspondence and at least to pay for traveling expenses and hotel bills incurred when meetings are necessary to consider these matters. I believe that has never been done and until it is done the committee work will be a failure. If it can be done in any way, the committees ought to have some funds placed at their disposal to meet expenses. You could hardly expect lawyers living in different parts of the State to leave their business and meet at some common place for the number of days necessary to consider these questions and formulate their reports. They possibly might have to go to Charleston to look after legislative matters and under present conditions, as I take it, it would be at their own expense. Now, men wont do that kind of a thing if they feel they cannot afford it. It is against human nature to expect it and I want to offer that as a suggestion. I claim if we fix this matter of finances the committees would do a great deal more work.

**President Mason**: Are there any other remarks, gentlemen?

**Mr. T. N. Parks**: Gentlemen, you have heard my suggestion. I therefore move that the chairman of each standing committee be authorized to draw on the treasurer from time to time as may become necessary for the necessary expenses of the members of the committee.

**President Mason**: You have heard the motion, gentlemen? What shall be done with it?

**Judge T. P. Jacobs**: Mr. President, I rise to a question of order: Can we dispose of the funds of this Association in that way? It seems to me that the funds could only be drawn out and disposed of in a certain way pointed out by the constitution.

**President Mason**: I am not sure about that. Gentlemen, what is the constitutional provision in relation to that?

**Mr. M. F. Snider**: I think the Executive Council would have authority in the matter.

**Mr. W. P. Hubbard**: Can there be any doubt that the Association has a right to dispose of its own funds as it sees fit?

**Judge T. P. Jacobs**: There is no question about the right, but the motion is not in order if there is any constitutional provision that stands in the way of it, and I do not really know as to that.

**Mr. T. N. Parks**: It has been suggested that the Executive Council has control of the funds and could direct the furnishing of funds to the committees with which to meet their expenses. I have no choice about the manner in which it is done but I am sure we would get much more work done if we would take that course.

**Judge T. P. Jacobs**: Mr. President, aside from the mere question of order is it the proper thing for this Association now or at any time in the near future to enter upon a system of that kind of paying its committee or committees for committee work and for their time? Surely the members of this Association should accept places on important committees and ought to be willing to do the work and ought to be willing to devote some time to it and ought not to expect to be paid for it, so I doubt the propriety of the scheme from any standpoint.

**Mr. T. N. Parks**: Mr. President, my motion did not contemplate paying any member of any committee for time expended; I said to pay the members their necessary expenses.

**President Mason**: Is there any further discussion?

The question was propounded by the chair and the motion was lost.

**Mr. B. S. Allison**: I move that it be the sense of this meeting that the Executive Council should have authority, whenever in its judgment it is deemed advisable, to furnish to any committee money for their expenses incurred in meeting and doing the work assigned them by the Association to do.

**President Mason**: Gentlemen, you have heard the motion that the Executive Council should have authority to pay for expenses of committee work. Are you ready for the question?

The motion was put by the chair and carried.

**Judge T. P. Jacobs**: Mr. President: The Committee on Grievances desires to get off of its hands its final report. The committee, in the interests of harmony, at least, and in the interests of a unanimity of opinion, if that is possible, have made the following addition to their report, to be inserted at the place indicated therein: "But the committee holds itself ready to receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and in proper cases will report the same with such recommendations as it may deem advisable and best calculated to subserve the interests of the profession and advance the administration of justice."

We make that amendment to take away any misapprehension that the public might get, or even that members of the profession might get from the report as read on yesterday.

**President Mason**: Is there any objection to the report as now offered?

**Mr. M. F. Snider**: I still think it is not advisable to leave that other sentence in there. The report now says the Association cannot

discipline persons unless they are members of the Association, but has a proviso in it. I do not think we still ought to go to the extent of saying that the Association cannot take cognizance of members of the bar in this State, outside of those belonging to the Association, if they act improperly.

**President Mason**: I will take the sense of the Association on a formal resolution to adopt the report and we will see whether we want to amend it any farther.

**Mr. George E. Price**: The report is presented and unless some motion is made to disapprove it, it seems to me that ends the matter.

**President Mason**: Then, gentlemen, unless there is some motion to disapprove the report or any part of it, the report will be received and filed.

**Mr. Ira Robinson**: I desire to submit the report of the committee appointed to audit the accounts of the Treasurer.

**President Mason**: The Secretary will please read the report.

The Secretary read the report of the Auditing Committee as follows:

To the West Virginia Bar Association:

The report and vouchers accompanying the same of the Treasurer of this Association, W. N. Miller, referred to us for audit, have been examined by us and found to be correct in each particular.

Respectfully submitted.

Dec. 29, 1905, Fairmont, W. Va.

IRA E. ROBINSON,
B. L. BUTCHER,
Committee

**President Mason**: What shall we do with the report?

**Secretary Peterkin**: I presume as that approves the Treasurer's report, it will be well to take action upon it, so I move that the report of the committee be received and approved.

The motion was put by the chair and carried.

**Mr. Nelson C. Hubbard**: I believe the special order the first thing this afternoon is the report of the Executive Council on the matter referred to them yesterday relating to the procedure of the Committee on Grievances upon a complaint referring to one who is not a member of the Association, and I will ask that we now proceed to that head.

**Mr. W. P. Willey**: Some fatality has attended the meeting of the Executive Council at this session. We have endeavored to get together to consider that report, but the obligation of making a constitution while the Association waited seemed to be a rather extraordinary proceeding, and while we have considered, individually at least, the matter which was submitted to us, we are not yet prepared to furnish a report that would meet the views of the Executive Council and probably not of the Association, and we would ask for further time. We have had submitted to us by a member who has had that

matter under consideration, a proposition to take the place of the clause in the constitution that refers to the jurisdiction of the Committee on Grievances, and we will submit that if the Association wants to discuss it; otherwise, we will ask for further time in which to present a proposition that will meet the views of the Executive Council.

**Mr. Nelson C. Hubbard**: I call for the resolution.

**Mr. W. P. Willey**: This has been suggested, merely, to the Executive Council, and it was prepared by Judge Moss.

The proposition referred to by Mr. Willey as having been submitted to the Executive Council by Judge Moss, was read by the Secretary, as follows:

"It shall be the duty of the Committee on Grievances to investigate all such charges of official misconduct against any lawyer practicing in this State as may be presented in writing to said Committee and are signed by the person or persons making such charges, provided, however, that the person or persons making such charges shall be, in the opinion of the Committee, responsible and reliable and provided further that such charges embody accusations which are, in the judgment of the Committee, of such a serious nature as to constitute a menace to or reflection upon the honor, integrity and fair name of the profession in this State and appear to the Committee to have substantial foundation in fact.

If, after investigation of such charges by the committee, it shall still be the opinion that such charges should be further acted upon then said committee shall report fully to this Association in relation thereto including the result of its investigation.

If the Association shall, by a two-thirds vote of the members present and voting, decide that such charges shall be further prosecuted, then the Association after at least thirty days previous written notice to the accused given by its Secretary of its intention so to do, shall at the time specified in such notice proceed to hear and to determine such charges and to decide and to vote upon the record of its proceedings its opinion of the guilt or innocence of the accused. If the accused be found guilty by a two-thirds vote of the members present and voting the Association shall then appoint two of its members to cause the prosecution of the accused in the courts or to cause disbarment proceedings to be instituted and maintained against him, or both, and may take such other action as the nature of the case may in its opinion justify.

If the accused be found innocent, then that finding shall be noted in the record of its proceedings and all further action on such charges shall cease and determine.

The fact of charges having been made and all information relating thereto shall be kept secret by said committee until it shall conclude and report as aforesaid that such charges should be acted upon by the Association."

**Mr. Nelson C. Hubbard**: I think that fairly represents the views of a great majority of our members. If the Executive Council did not have and could not make any opportunities to have a meeting between the time this was discussed yesterday and the time at which the committee was directed to report today, at two o'clock, and if it wants a year to report in, I do not see but what we will have to give it its year. There is another reason for it, because the suggestion made by Judge Moss covers not only the instructions of this Association to its Committee on Grievances, but also proposes the procedure in the Association itself after that report comes in. That adds an element which certainly requires time for consideration by the Executive Council, which it has not given as yet. It seems to me we ought to have for the ensuing year in the constitution and by-laws some instruction to the Committee on Grievances which will satisfy them that the constitution requires them to consider these outside matters, and I would like to present and offer as by-law No. 13, something which may serve for the present year, and may be a year from now, or as many years from now as may be needed before the Executive Council gets ready to report, when it can be superseded by such report:

"No. 13. Any complaint against any attorney who is not a member of this Association, shall, if submitted in writing and verified by the affidavit of some credible person, be received and considered by the Committee on Grievances. If such complaint shall appear to be substantially within the provisions of section 13 of the constitution, the committee shall, after reasonable notice to the accused, investigate the matter, and recommend to this Association such action as it may deem appropriate."

If some such amendment is acceptable to the Association I think it might be well to adopt it at the present time with a view to having it superseded at a later time by the more formal and complete procedure outlined by Judge Moss. I understand by a two-thirds vote we can adopt such an amendment at the present time without asking the Executive Council for action. I therefore move the adoption of this by-law.

**President Mason**: It has been moved that the paper just read by Mr. Hubbard be added to our by-laws as by-law No. 13. Are there any remarks?

**Mr. B. S. Allison**: There is a matter which occurred to me yesterday which was not voiced by anybody else, and I think it is worthy of the consideration of this body. It seems to me that the grievance committee object, and I think properly object, to all of the work that is contemplated by this plan for them to do in cases of complaint made to them, because it might call for work away from their homes and far distant from their places of business, and it is not right that they should be called upon to do that. The procedure established, now, in Ohio County Bar Association is this: They appoint a special

committee to investigate a matter of this kind and report to the Association, and then the Association instructs that committee to proceed with its proceedings before the court. Now, if this Committee would merely turn over the grievances to this Association, when put in proper form, this Association could refer the grievance to the Bar Association of the county where the culprit resides, if there is one there, and if there is no such bar association, then a committee of this Association composed of members practicing in the circuit courts where the culprit practices, should be appointed to investigate that matter and report to the Association and let the Association take action upon it, and then the Association could direct that committee to proceed with disbarment proceedings before the court. Now, there is the machinery that would be effective and it would only impose the work upon persons who would be responsible for that kind of work, namely, the lawyers who practice at the bar in the circuit where the culprit is seeking to practice. And those men should certainly be willing to discharge that kind of a duty, disagreeable though it might be. Moreover, the local members of the Association would not feel, as suggested yesterday, like taking upon themselves individually and upon their own motion the responsibility of prosecuting a man who should be prosecuted; but when they are armed with the authority of this Association, acting under its instructions and with the Association back of them to assume the responsibility of their act, that committee will discharge its duty, will investigate the matter and will report to us, and if this Association then deems it advisable to instruct them to institute disbarment proceedings, it will do so. It seems to me no more should be expected of the Committee on Grievances than that they should see that the charges are put in proper shape and presented to us, and then let the matter be submitted to a committee of the circuit where the culprit lives. For that reason I am opposed to this resolution in the shape it is.

**Judge H. H. Moss, Jr.**: Mr. President: I am sure that a majority of the Association are glad to find out that the Committee on Grievances did not intend, as it now appears—and I believe they speak sincerely—to lay it down as the policy of this Association that serious misconduct on the part of those who are not members of the Association should be overlooked by the Association, and this amendment to the report indicates that. I do not, therefore, see any special need, if there was some procedure outlined, for any further action by the Association on the subject, but as a matter of fact a perusal of the constitution and by-laws of the Association discloses the fact that there is absolutely no procedure upon which they may act. While I am ready to admit that that resolution or draft of paper which I offered may be very imperfect in form—and if so, I hope that it may be amended as the Association may see fit—yet the idea was to form some definite plan to follow when these matters were brought up. Now, it has been stated by the gentleman who has just taken his

seat that that would impose an arduous duty upon this committee. I do not so understand it. In drafting that resolution I attempted to put in there every precaution for the protection of the accused against spite work and against hasty action. There will be notice, in the first place. Those charges must be made in writing and must be signed by responsible parties and that is left entirely with the committee, and without any attempt at flattery it may be said that many of the leading lawyers in the State will be in a position to know whether or not the parties signing those charges are responsible; and secondly that they must appear to have a substantial foundation in fact; and thirdly, and especially, that they must be of such a serious nature that the fair name of the profession in this State shall be at stake. Now, all of that is left with the discretion of this committee to whom I believe this Association would be willing to trust that matter. There may be numerous charges, although I do not anticipate that there will be a great many--but there may be numerous charges and a large number of those charges would be eliminated before the committee ever came to an investigation; but if they believed that those charges should be further proceeded with, then they would investigate them and if after that investigation they are of opinion that the charges are not serious enough or not explicit enough, or not sufficiently proven to justify going ahead with them, then they shall drop them and no one would ever know that they were made. Now, that provision for a secret hearing on the part of the committee is already in the constitution and by-laws with reference to members of the Association. If they believe that the charges should be proceeded with, then they are made here to this Association. There is another precaution for the protection of the accused: that by-law would provide that two-thirds of this Association must believe that these charges are well founded and of such a serious nature as this Association should take cognizance of, and I take it the Association will not waste its time over frivolous charges. Now, that being true, Mr. President, after that is done then the accused is given a chance to appear here and show his side; and while I am on my feet I want to anticipate any objection that may be made—because I will promise not to make another speech in regard to this subject. It has been stated in private argument that you could not compel a man to come before the Association; it was stated to me by one of the gentlemen from Fairmont, that he knew a man who does not think much of this Association and who, if he were accused of misconduct, would not appear before it—that he had too much contempt for it, or words to that effect, and therefore it would be a wrong and a hardship on that man to summon him, or at least to notify him that those charges were to be heard here. I say not; I say that if that man does not choose to come here and defend himself that it is his own lookout, and I say further that this Association is the only body that has at heart the interests and wel-

fare of the entire bar of the State. There is no question about that.

Now, the gentleman speaks again of local associations. In the first place not one-half of the counties have local associations; I think it is a less number than that; and therefore under that argument everybody who is guilty of official misconduct or professional misconduct who did not live in a county where they had any local Associations, would go free; but under the provision here, if the Association after hearing the charges—the accused being present if he sees fit—decides that they should further prosecute, then it shall appoint two of its members either to cause the prosecution of the offender or else to cause disbarment proceedings to be instituted and maintained against him. Now, there are some very serious offenses, Mr. President that a lawyer might commit which would not be punishable under the laws of this State and that he could not be indicted for and yet in the eyes of any decent lawyer they might be even greater wrongs than indictable wrongs; therefore that resolution provides that this Association shall appoint two of its members to cause the prosecution of the accused in the courts or to cause disbarment proceedings to be instituted and maintained against him, or both, and may take such other action as the nature of the case may in its opinion justify. Now, in regard to getting local men to do that: there is no reason why two local men should not be selected—two men residing at the same bar with the offender. That would be the natural thing to do. It seems to me, Mr. President, that this is called for—that there is a crying need for it. I do not care the snap of my finger whether that resolution or whether that by-law goes through or whether some other one does; but it seems to me this subject having been raised here in this Association, that we should take some positive action one way or the other on it.

**Mr. George E. Price**: Whilst the Judge is on his feet will he allow me to ask him a question?

**Judge H. H. Moss, Jr.**: Certainly.

**Mr. George E. Price**: I would like to know what his idea is as to the character of the offenses that this Association ought to investigate; I would like that question discussed.

**Judge H. H. Moss, Jr.**: Mr. President, I have not considered the list of offenses that a lawyer might be guilty of. One of the offenses that I might say should be taken cognizance of would be, for example, being employed in a case and selling out to the other side. Would that be indictable? I think not.

**Mr. George E. Price**: He would be disbarred for that.

**Judge H. H. Moss, Jr.**: Very well; that provides the machinery for disbarring him; we want the machinery and we cannot get along without it.

**Mr. George E. Price**: The point I am inquiring about, is this: whether it is the Judge's idea that this Association shall resolve itself into a machine to hear and determine and prosecute all the lawyers

who may be guilty of unprofessional or criminal conduct in the State, upon complaint being made by reputable parties—whether it is understood that this State Association shall undertake that work. If so, I am very decidedly opposed to it, sir.

**Judge H. H. Moss, Jr.**: My answer to that would be that they are to take up such cases as in the wisdom of this official committee should be proceeded with farther after they have investigated them.

**Mr. Harvey F. Smith**: The resolution as first offered appears to me to be very conservative and very liberal to any person who has offended. I think there should be some action at this time unless that part of the Executive Council which is here opposes it. If they do, we bow to their will. There seem to be some gentlemen who are possibly ultra conservative, fearing that the work of its committee will be too laborious for them. There is no reason for this apprehension at this time as my information is that the committee thus far has never been worked very badly. Then, gentlemen, unless, I say, your Executive Council objects to the resolution as offered, let us have an expression of opinion now and aid the committee, which has shown a willingness to be fair. The resolution which has already been offered seems to be eminently fair and decidedly conservative and yet plain and full in its terms.

**Secretary Peterkin**: Mr. President, I presume the question that is really before the Association is the adoption of the proposed amendment suggested by Mr. Hubbard, the committee having simply presented, to have read, this suggestion of Judge Moss. Now, it seems to me the proposed amendment offered by Mr. Hubbard entirely covers the matter and provides everything necessary to be done at this time. It certainly settles the question which has been raised as to non-members.

**President Mason**: Please read that proposed by-law again.

The Secretary read as follows: "Any complaint against any attorney who is not a member of this Association, shall, if submitted in writing and verified by the affidavit of some credible person, be received and considered by the Committee on Grievances. If such complaint shall appear to be substantially within the provisions of Section 13 of the constitution, the committee shall, after reasonable notice to the accused, investigate the matter, and recommend to this Association such action as it may deem appropriate."

Now, the lengthier provision of Judge Moss' proposition goes on and provides for a certain method of procedure. I think the suggestion made by Mr. Hubbard covers all the ground necessary now, even if it should be found hereafter that some other details might be better. The proposed amendment of Mr. Hubbard while covering these essentials leaves it to the committee to make such recommendation as they think best. There is one other thing in Judge Moss' resolution, which I suppose could be cured by an amendment, but as it is it requires a two-thirds vote of the members

present to decide whether or not the charges shall be prosecuted, and then the Association after thirty days notice shall proceed to hear and determine the charges. That would require that we should either have two meetings of the Association or wait for the next twelve months until the Association meets again in regular order. I think, therefore, it would be better for the Association to adopt the amendment proposed by Mr. Hubbard, and in the meantime the Executive Council, during the next year, can suggest any more elaborate details which they may deem advisable.

**Judge H. H. Moss, Jr.,**: I think your criticism is a good one. I was not able to solve that question and I do not see how we are going to take it up unless we wait until the next meeting.

**Mr. George E. Price**: I do not want to take the time of the Association to discuss this question any farther. I have no feeling in it whatever but it seems to me that the gentlemen who are pressing this matter are taking too narrow a view of the scope and purpose of this State Association. This is not a local association, in any sense, and it is not intended that it should deal with local matters. It embraces the whole State and is intended to be in all its actions comprehensive of the State and the interests of the bar of the State, just as the American Bar Association is a national association and would not think of going into matters affecting the local bar of a State but deals with matters affecting legislation for the nation, and interstate matters. So this is an association of the lawyers of the State created for the purpose of promoting legislation for the benefit of the State, the general administration of justice throughout the State, uniformity of practice amongst the courts of the State, and matters of that sort that are as wide as the bounds of the State; and it does seem to me, Mr. President, that you will introduce into this Association elements of discord and elements of trouble and matters that will take up the time of this Association, with which it ought not to deal, if you attempt to go into the matter as deeply as Judge Moss indicated in response to my questions. The questions I put to him were intended to develop his idea as to what class of offenses this State Association would be justified in taking up its time to investigate. Now, if there is anything in the practice in any part of the State, or amongst the members of the bar in any part of the State, that ought to be condemned by the Association in general terms as a whole, we can take that up and investigate it and take such action as may be necessary; but if a lawyer in Wheeling steals his client's money or sells out to the other side, or something of that sort takes place, I do not think, sir, that this Association ought to make an investigation or attempt a prosecution in that matter. And these are matters with which the local people, even if they have no bar association, will have to deal and get along with the best they can. This Association by elevating the general standard and creating a sentiment—an esprit de corps—amongst the lawyers, and creating that

standard which will make itself felt throughout the State, will do about all that can be done in that direction so far as its members are concerned. If any member of this Association should be guilty of misconduct we can deal with him because he has come in and submitted himself to this jurisdiction by becoming a member and we can bring the force of this Association to bear upon him. I think whatever is done, if anything should be done, ought not to take such a scope as some of the gentlemen here seem to think should be taken.

**Mr. W. W. Brannon:** I was somewhat interested in this subject yesterday and although I have not heard all that has been said today I still feel considerable interest in it. I am decidedly in favor of the views just expressed by the gentleman who just took his seat. Now, I do not believe this Association could do itself more harm than to go around over the State, by a committee or otherwise, and undertake to investigate the practices and conduct of the lawyers all over the State who are not members of this Association. I would regard it as a very serious and doubtful step to be taken by the Association. If it wants to bring itself into opposition to those who are not members of this honorable organization, I do not know of any better way to do it. Now, as I understand the matter, from the drift of the discussion, it seems to me that if this Association takes such steps as to inaugurate such a proceeding in any circuit court of the State for the purpose of disbarring any non-member of this Association in the practice of the law, the proceeding starts with a declaration upon the part of this Association that there is merit in the charges against the defendant; that they are sufficient on their face and that they are regarded as sufficiently serious to merit investigation; and we go into the circuit court—say, before my esteemed friend Judge Moss or Judge Willis or the honorable gentleman who is the President of this Association—with a declaration to the court that this Association has determined that a certain state of facts exists. I never could understand the propriety, Mr. President and gentlemen of the Association, of a declaration by any board or body of individuals as to what a court ought to do in any pending case. I believe that the courts of this State do not object to fair, temperate, conservative criticism upon their judgments and decisions. They are human as are all other institutions but do not object to fair, conservative criticism; but I do not understand that it is the duty of the courts to take cognizance of or allow a declaration by any individual that a certain decision ought to be rendered in a certain case, or that a certain paper is sufficient upon its face to invoke the power of the court. It seems to me that the constitution is all right as it is, and we may rely upon the circuit judges in this State, upon proper complaint, to protect the people from the shyster at the bar under the provisions of the statute which are ample for that purpose. I think the matter is all right as it is. This discussion has arisen, as I understand it, simply because of the declaration in the report of the committee to the

effect that the committee hasn't the power or the machinery to discipline or to punish non-members of the Association. I subscribe to that sentiment so far as I am concerned. If we strike it out and adopt the policy which it is proposed to pursue the declaration inferentially is that we do have a power such as that committee properly declined, I think, to say we possess. It seems to me the subject is right as it is. If our constitution relates to anything it relates to the members of the Association and I do not believe we have any power to go any farther by way of punishment. I do not think we have any means of punishing an individual whose presence we cannot secure and who might defy our judgment, and might even present the judgment of this Association before a circuit court and submit the question whether this Bar Association is not going beyond its scope and power by making allegations against him.

**Judge M. H. Willis**: I desire to say a few words only with reference to this motion now pending. I did not intend this afternoon to say anything upon the subject under consideration for the reason that my feelings are so strong upon that question that I doubt very much whether I can discuss the matter with the calmness and and considerate judgment that the question ought to have. It does seem to me, Mr. President, that when this Association turns itself loose to adjust matters all over the State that it is undertaking quite a task, and it furthermore seems to me it is saying, when it undertakes that task, that its members situated in the different parts of the State have not the nerve and the courage to do that which they ought to do as lawyers and as members of this Association. If there is a single member here this afternoon who will stand upon the floor and say that he has not the nerve and courage to protect the interests of his own local bar and to care for matters where he is personally interested, let him stand up and say so, and then probably it may be necessary for this Association to do something for the protection of the community in which he lives. But beyond that, Mr. President, comes a further difficulty that arises with reference to my friend Judge Moss and myself who take opposite views in this case and that arises with reference to the other circuit judges in our State. If Mr. President, it would be improper for a member of a grand jury that had returned an indictment into court to try any question of fact in connection with that indictment, how much more improper it would be for Judge Moss or myself or any other circuit judge in the State, after our Association had declared there was merit in the charge, to act in that case. Does Judge Moss mean to say by his action here that this Association shall disqualify him as a judge from acting in cases of that kind when the question of prosecution or the question of the disbarment of a member comes up in his court? Would it be proper for him, would it be proper for myself, would it be proper for any other circuit judge to act when he had before that time acted with the Association in the preliminary investiga-

tion of the question involved and had ordered a prosecution to be had? I do not believe, Mr. President, as officers who have been elected by our people to discharge certain things and to do certain things, that we have any right to deliberately disqualify ourselves from action in those cases. I am quite sure Judge Moss had no such thought when he presented the matter for consideration, and I have no doubt in my own mind that he—knowing him as a pure, upright man and an honorable, upright judge, as I do—on reflection would take action in any case whatsoever in which he had first taken any action in the Bar Association; and I would feel that if this procedure is to be followed out—if this course that has been outlined here is to be followed out—I would feel that my first obligation is to the people who elected me rather than to the Bar Association of which I am proud to be a member; and if my further connection with the Bar Association means that I would disqualify myself upon acting upon any case, then, as much as I would hate to do it, my membership with the Bar Association would have to end. While this, of course, would not injure the Association in the least, yet it would very much, indeed, interfere with the very great deal of pleasure and profit which I have derived from my membership in this Association.

**Judge H. H. Moss, Jr.**: Mr. President, I promised I would not speak farther, but if the Association will indulge me for just two minutes I want to remove, if I can, what I consider some grave fallacies in regard to this matter.

Judge Brannon speaks of the fact that he does not believe it proper for this Association to go all through the State and prosecute these offenders. Judge Willis intimates that it would be highly improper for us to belong to this Association and still sit as circuit judges. Now, Mr. President, I believe it to be true that Judge Willis or any other sensible, fair minded and impartial judge who was a member of this Association and knew that these proceedings were pending, would certainly not take part in a meeting at which these proceedings were acted upon, and if he did not, then the mere fact that this Association recommended certain action would not disqualify him from hearing it, and I say frankly and without a blush of shame that I would not consider myself disqualified because some other agency put on foot the prosecution of men who are not worthy of belonging to the profession. I would not consider and I would not be biased by what this Association might do; that would absolutely have no influence with me whatever, because my idea is that they constitute only an accusing body just like the grand jury does, and the mere fact that they brought an accusation would not prove the guilt of the accused. Now, Mr. Brannon seems to have a very erroneous idea of the effect of an accusation brought by this Association. He says that it would amount to trying to influence the judge. I do not see it that way. The point is this, Mr. President: after all technicalities are cut away and after all is said and done, the question is

this, and it is a vital question: whether this Association stands for the upbuilding of the bar of this State when it knows—no matter what Judge Willis may say as to whether you and I have the nerve—when it knows and when you and I know that as local attorneys we have a hesitancy in getting after these violators of professional ethics, sometimes out of good fellowship, sometimes because we think the public would think we had a private ax to grind, and for other reasons. I cannot see how Judge Willis can help but know that the local attorneys do not do their duty, and where they have no local association, nobody does anything. I think everybody must admit that to be the fact even in counties where they have local associations, except in exceptional cases, as for instance in the county of Ohio. Now, the mere fact that this Association said that they believed this matter should be investigated would simply put the machinery in motion, and certainly should not influence any fair minded judge; I know it would not influence my friend Judge Willis.

**Judge M. H. Willis**: Let me inquire of Judge Moss whether, when you are a member of a body making an accusation, it would be right for you to determine any questions of fact in connection with that accusation?

**Judge H. H. Moss, Jr.**: It would be just as right as it would be for me to sit in a case where an indictment had been found by my grand jury, which is a part of the machinery of the court, and if I should deserve blame for it then I would want to have it. I would sit in such a case if I took no part in the proceedings. Now, Mr. Hubbard has offered a resolution which I think is as far, possibly, as a majority of the Association at this time want to go. This is not a personal matter with me any more than it is with anybody else; and my brother Price is right when he says he has no interest in it. It is only a question whether or not this Association wants to stand up for the high principles which inspired its founders; and I therefore move the adoption of Mr. Hubbard's amendment to the by-laws.

**Judge R. F. Fleming**: I move that the motion be laid upon the table.

The question was propounded by the chair and the motion was lost.

**President Mason**: Now, gentlemen, the question is upon the adoption of Mr. Hubbard's amendment.

The question was propounded by the chair and the amendment was adopted.

**Mr. W. N. Miller**: I wish to propose an amendment to Article 6 of the constitution as follows: That after the words, "A Committee on Banquet," there shall be added:

"The Committee on Judicial Administration and Legal Reform, on Legal Education, on Legislation and all other committees appointed to propose matters for legislative action, or to whom such

matters may be referred for report, shall, at the expense of the Association, have printed and distributed to members copies of their reports at least ten days before each annual meeting. It shall be deemed a compliance with this requirement if such reports shall have been published in 'The Bar' at least ten days before each annual meeting."

If I may be permitted I will say that I have offered this amendment in view of some discussions that have taken place on this floor during the present session, as well as in view of the suggestions of one or two members by whom it has been intimated that we have not accomplished in this Association what we should have accomplished during the twenty years of our existence. The reason which has been assigned, by those who have had the subject under consideration, why our committees do not act, is, that we often do not have any reports at all, and if we do have reports they sometimes come straggling in during the session without any opportunity being given to the other members who are not on the committees to consider such reports. Hence, if we could have these reports printed and distributed among the members at least ten days before the date of the annual meeting, each member would have an opportunity to consider the reports, and could come here prepared to discuss the subjects presented and to take action thereon. This amendment which I propose is simply to add a provision which I understand, or indeed know, is contained in the constitution and by-laws of the National Bar Association, and I think if a requirement of this kind is made, and it is complied with by the members of the various committees, that we would be able more properly to consider propositions coming before us for action relating to these legislative subjects.

**President Mason**: Gentlemen, you have heard the proposed amendment. The question is shall it be adopted?

The question was propounded by the chair and the amendment was adopted.

**Mr. W. P. Willey**: Mr. President, I would like to inquire what the next order of business is?

**President Mason**: The next order of business? I think I asked the gentleman from Monongalia, Mr. Stewart, to withdraw a motion he offered before dinner and suggested to him that he could bring the matter up this afternoon. I suppose it will be in order to receive it now.

**Mr. Terrence D. Stewart**: I would like to offer again the resolution proposed by me this forenoon.

"Resolved, that the whole matter of admission to the bar of the State be referred to the Committee on Legislation to be created by the incoming President with instructions to that committee to confer with the members of the supreme court of appeals and with the State board of examiners for admission to the bar and prepare and

present a bill to the next Legislature more definitely defining the question of admissions to the bar."

The question being upon the adoption of the resolution, the same was put by the chair and the resolution was adopted.

**Mr. W. P. Willey**: I would like to make a motion that I have wanted to make for some time but I did not know where to get it in. It seems to be miscellaneous business now that is before the Association, and if the Association will hear me, it will not take but a minute. There was a paper presented to the Association during this session by Captain Poundstone that I think was the most important in its subject matter that has been presented to the Association for some time, relating to the maturing of causes at rules. I was sorry to see that paper passed by in silence and to a certain extent pigeonholed. I believe there is no chapter of the Code of West Virginia that is more scrappy, more heterogenous—

**Mr. W. N. Miller**: Hasn't that paper been referred to the Committee on Judicial Administration and Legal Reform?

**Mr. W. P. Willey**: I said the paper was passed by without discussion. I have been trying to get that subject before the Bar Association for several years and thought I had succeeded this time, but in a very imperfect way, and I am satisfied with my success. I was saying that I believe there is no chapter in the Code of West Virginia that is more unsatisfactory, more imperfect and more heterogenous in its nature than Chapter 125 of the Code relating to rules of pleading, and I have a conviction that if this Bar Association does not take up that chapter and provide for revising and remodeling it, that the practice in this State—that the common law practice system of pleading will give way in a short time to the shyster practice, or code practice as it is called in some of the western States, and that the men who have learned the law as a science will be put upon a par and upon the same plane with the shysters who have never seen a code of common law pleading or a work upon that subject. That is going to be the natural and inevitable result of retaining that chapter in its imperfect condition. Now, I want—without discussing this matter—to make a motion that this paper of Captain Poundstone, together with chapter 125 of the Code, be referred to a committee of five picked lawyers—picked by the President of this Association; men who have had experience in practice; men of ability and standing and who have a reverence for the common law system of pleading—who shall take into consideration the revision of that chapter and report to the next meeting of this Association.

**Mr. John Bassell**: I would ask of you to please point out what you mean by some of the incongruities or defects in that chapter?

**Mr. W. P. Willey**: Well, I do not want to keep the Association until after dark but I regard it as a burlesque upon the business ideals of the legal profession in this State that thirty days, for in-

stance, should elapse for the interchange of pleadings between the plaintiff and defendant in maturing a cause in court. I regard it as an imposition upon the profession that the sections of that chapter which are related to each other are scattered all through the chapter—scattered to such an extent that the beginning of a rule which is put in the front of the chapter ends in the latter part of it, and is superseded, almost, by the second rule. The whole chapter seems to have been gotten up in a scrappy way; it is obscure; you do not know when you read a rule in that chapter, it seems to me, what interpretation to put upon it; you go ahead, and stop and jump around and do not know where you are. Why, it is only a short time since the circuit judges of this State had to get together and make rules of pleading and practice in their courts. There ought not to be any such necessity as that, it seems to me, in this State. That chapter ought to provide for the practice and procedure in the courts; it ought to provide minutely for it and in a clear way; it ought to expedite, in all of its provisions, the maturing of causes more than is done by the chapter as it is. There is no more just complaint among the people of this State, there is no more just complaint among the people of the country, than in regard to the sloppy, languid manner in which the business of the courts is being administered, and it is due, it seems to me, more to that chapter than to any other cause, so far as this State is concerned.

**Mr. George E. Price**: Now, Professor, you have only indicated one defect and I am anxious to hear what the trouble with that statute is. The one that Captain Poundstone pointed out was that in Virginia they have semi-monthly rule days or two rule days in the month. Now, is there anything else the matter?

**Mr. W. P. Willey**: Will my Brother Price, who is an experienced practitioner—

**Mr. George E. Price**: I want to know what your idea is?

**Mr. Harvey F. Smith**: Professor, we want you to be more specific in your assignments of error.

**Mr. W. P. Willey**: I would like Brother Price to tell me, when the plaintiff does not file his declaration at the time and the summons is returnable to any rules, what under that chapter should be entered upon the docket—upon the trial docket—the court docket.

**Mr. George E. Price**: "Summons returned executed;" that is all—that it is executed.

**Mr. W. P. Willey**: Well, there would be a rule to plead, wouldn't there?

**Mr. George E. Price**: Oh, no; not until the declaration is filed.

**Mr. W. P. Willey**: Well, suppose the plaintiff filed his declaration and the defendant appears and does not plead; what then?

**Mr. George E. Price**: Then it would be noted that he appeared.

**Mr. W. P. Willey**: I undertake to say that these judges sitting in this Association—in this body of eminent lawyers—cannot tell

what is necessary to be done under that section of the Code.

**Mr. George E. Price**: What would you enter?

**Mr. W. P. Willey**: I do not know; I know what the practice is but I do not know what that section provides; and you can take it section after section and you will find it is in just that muddy way that we are conducting the procedure of our courts under that chapter. We have no rules of pleading that are reasonable and understandable in the Code.

**Judge T. P. Jacobs**: Let us remember that chapter was prepared substantially as it is by old Conway Robinson back in the 40's. There have been some amendments, as experience has demonstrated was necessary, and some few amendments to conform to the ideas of the supreme court. While I have great respect for Professor Willey's opinion and judgment, really and candidly I think that is one of the most harmonious statutes we have; and, Mr. President, and gentlemen, counsel who have practical experience in bringing suits, have no difficulty in the world under that chapter.

**Mr. W. P. Willey**: But they do not follow that chapter.

**Judge T. P. Jacobs**: Well, I know of no other way of getting a case on the docket except by following that chapter. Now, the only possible amendment that I could suggest today would be to provide for rule days on the first and fifteenth of every month rather than the first Monday of every month. I always feel like getting attached to that old statute; it has served us well and nobly and we know what to do—every practitioner knows what to do to bring his suit to maturity and transfer it on the trial docket and issue docket and if we begin now to trim off and lop off, we will get confusion worse confounded. I really think that is the model statute in the Code of West Virginia.

**Mr. W. P. Willey**: Don't you think that chapter could be revised so as to expedite the maturing of causes at rules?

**Judge T. P. Jacobs**: No; in order to expedite the maturing of causes at rules you would have to increase the number of rule days and shorten them. If the plaintiff takes out process returnable at rule days the defendant may appear and require him to plead or require him to declare, or the plaintiff may appear and plead and require a rule to answer or plead.

**Mr. John Bassell**: It is with the defendant—

**Judge T. P. Jacobs**: It is altogether with the parties—with the defendant as is well suggested. * * * * * If the plaintiff does not proceed to plead there is a penalty attached provided the defendant invokes its operation; if the plaintiff pleads, he may invoke the operation of the statute and compel an answer or a plea. Why, it is plain and easy, it seems to me, and I cannot see how you can amend it and make it any plainer. I say, in these days when courts are so frequent, I would either cut out one term of court or shorten up the

rule days. With that exception I can see no change that we can make.

**Mr. R. F. Fleming**: There is one very serious objection, and my attention was called to it yesterday while listening to the reading of Captain Poundstone's paper, and that was in respect to pleas in abatement. It is not necessary for me to detail any experience I have had on that subject. If we had two rule days a month instead of one, and the defendant had some notice of when the declaration against him was filed, or the return of the summons executed, then he should be permitted to file a plea in abatement—the second rule day, for instance, would be my suggestion; but no matter, the defendant ought to have a day in court at rules in which to plead in abatement, and not be left in bewilderment as to whether or not process will be returned executed.

**Mr. Ira E. Robinson**: Pardon me; but a plea in abatement is now to the second rule day.

**Mr. W. P. Hubbard**: An old woman was once asked what she thought of the doctrine of total depravity, and she said she thought it was a very good doctrine if people would only live up to it. So I think Chapter 125 is a very good chapter if we only make proper use of it. Why do the gentlemen want two rule days in a month when they do not now use one rule day a month, unless it is simply to have it in case they should want to use it? But how does that help you to expedite causes? The only fault in chapter 125 is that it imposes no penalty for default in pleading at rules. The idea of the establishment of rules, as I suppose, was, that they were to take the place, practically, of terms of court; that instead of wasting one, two or three days at the beginning of a term of court in making up causes, that the parties by their counsel were expected to be present at the rule days and make that progress from month to month which they now make only from term to term. The only trouble with the statute is that it permits you at term to come in and as a matter of course to have set aside the default entered against you. Take away that provision and compel a man to come in and plead at rules as he is now compelled to come in and plead at the first term of court—unless very good cause be shown—and let that default be final, and then you will find that parties, or the counsel, rather, of parties, will come to rules and very much time would be saved to the court as well as to members of the bar. * * * * * The fact is the facilities provided by that chapter now are not used by the members of the bar as they should be used to get the benefit that is to be had from them. I really do not see what is to be gained by providing two rule days instead of one. If you can educate the members of the bar to get together once a month and make such progress as can at that time be made, then it will be time enough to talk about getting them together twice a month in order to expedite matters that

much more. The only trouble with Chapter 125 is that it imposes no penalty on default; but members of the bar fail to make the progress they should because they do not avail themselves of that chapter.

**Mr. John Bassel**: Suppose you impose a penalty, would not the court in term have to determine the sufficiency of the pleas? Would not the same matter come before the court finally and would you save any time by that? Suppose a party files a special plea at rules, it would have to come before a term of court.

**Mr. W. P. Hubbard**: Well, we will say that is so in half the cases and it is not so in the other half. You would save that much time. I am not saying everything can be done under the present method; I am only saying what you cannot do and what you can do; and until you do that and get along as far as you can with the facilities now provided, it is not worth while to talk about other facilities that you will not use any more than those you now have.

**Mr. Charles McCamic**: During the last session of the Legislature I had the misfortune to be a member of the Judiciary Committee of the House of Delegates. There was a bill prepared, which I have in mind, changing the present procedure at rules and providing for two rule days a month instead of one rule day as it now exists. The judiciary committee of fifteen members was composed of lawyers, with one exception, and that exception was Dr. Lanham, of Taylor county. This bill received the thorough consideration of the committee. Each member of the committee—at least the legal members—wrote to some if not all the members of their home bars and asked for an expression of views on the measure and in the majorities of replies that were received the writers said they were opposed to any change. I think to the letters I sent out—probably a dozen in number—I received one reply and that reply was from Judge Hervey, of Wheeling. The committee at that time declined to recommend this bill favorably and I think it took the form of a pocket veto. Now, if the members of the profession took no more interest than that in this measure a year ago I do not see what reason we have to believe that they will take any interest in it in the future. At that time, it seemed to be the view that only one rule day a month was enough.

**Mr. George E. Price**: Mr. President: I think Mr. Hubbard has put his finger upon the only thing that delays the maturing of causes and I am rather inclined to think Mr. Bassel has pointed out that it is very difficult to remedy it. Now, the questions that I asked Professor Willey were not captious, sir, nor intended to show the fallacy of his position or the fact that there was no necessity for a revision of that chapter, because I thought it likely that the Professor, having given special attention to this matter, would be able to indicate and point out definitely some radical defects in our system of maturing

causes; but I do not think, sir, that the matter of two rule days a month will help it. I do not believe it is desirable. Nowadays, with the movement of business we have, if a lawyer has any practice to speak of, two weeks is a very short time in which to confer with his clients and prepare such defense as he might need, and to adopt a system that would give but that time for replying or maturing a plea, I think would be a mistake. I do not think it would help us any. The fact is, Mr. President, that the delays of the law are not mainly but very slightly attributable to the delay in maturing causes so far as filing a plea and making up the issues are concerned.

**President Mason**: The plaintiff takes time to suit himself.

**Mr. George E. Price**: Yes, sir; the plaintiff takes time to suit himself. He can file his declaration in one month or two months or three months.

**President Mason**: At any time before the statutory limit bars him from bringing suit. He isn't always ready, and ought not the defendant to have a little show?

**Mr. George E. Price**: He can bring the defendant up very quickly about four times a year. I am not opposed to appointing a committee to revise that statute, but I do hope it will not go to the extent indicated by Professor Willey and go into details—undertake any details—as to what shall be done here and there, any more than you have, because whenever you get into that you get into the code practice of which the learned professor has about the same opinion that I have, although I do not know much about it.

**Judge Alston G. Dayton**: I want to say a few words in this connection derived from personal experience. I agree with Mr. Price that the maturing of causes is not half so difficult, if you will allow me to express it in a different way, as to solve the problem how active, practicing lawyers can be in four or five courts at the same time, and as one of the judges of the Federal Court I want to say to you that the administration of justice in that court is delayed more by the efforts, it seems to me, in the State of West Virginia to keep a lawyer in court all the time instead of giving him an opportunity to be in his office long enough to consider and study out the cases that he has.

If any lawyer in this Association will enable me to solve the problem how I can secure the fixing of the terms of the Federal courts so that the lawyers, say from three or four counties, who are interested in a case can meet at one and the same time without conflicting with their State courts under the four-term rule, he will confer upon me the greatest favor possible. Now, I submit to you as lawyers, and I submit it simply because I have an earnest desire if it be possible that the Federal court may be brought in close touch with the bar all over the State in the several districts, and that the court may be an open forum for the practice of all the attorneys at

the bars of the State—I submit to you that this constant struggle to promote the trial of causes is practically preventing the very object it was designed to accomplish, and that it is filling up the court of last resort with appeals that are simply making the position of judge of the supreme court of appeals in West Virginia a burden that is cruel to any man who assumes it. Their reports show, if I mistake not, that during the last year they have been compelled to sit two hundred and sixty-five days out of the three hundred and sixty-five days in the year, and that, under a pressure, as I was informed by one of the judges himself, that requires them to grind out and prepare and write—each one of them—an average of two opinions every week; and yet the number of cases—and the clerk of the court will bear me out in this statement—has increased over one hundred this year over last year. Now, there is a reason for this, gentlemen, and it strikes me very forcibly that that reason is the fact that in the multiplicity of courts the lawyers are not mature in their judgment in regard to cases and are not performing to the fullest extent their duties in aiding the courts with their briefs and arguments to reach a right conclusion, and the courts themselves are not having the time and opportunity to maturely consider of their judgment. You can make haste slowly sometimes and accomplish better results than you can by going headlong into these questions, and, as I say, with an earnest desire to promote the good of all the courts, I submit to you if these four terms of the circuit courts in the several counties, a year, added to the proposition that you have two rule days, will not substantially clog the courts and the administration of justice in all the branches of the several courts.

**Mr. W. P. Willey**: I just want to say that I do not think my motion will injure this chapter in any possible way. Certainly, if it is perfect, this committee can so decide; if it is not, and any amendment can be made to it—if in that chapter the rules that are related to each other can simply be brought together, or if any additional elaboration of the chapter can be made that will improve it—let the committee so report. If they say it is perfect we will have to submit. I simply ask for the appointment of a committee to take that into consideration and report at the next meeting of the Association.

The question being upon the adoption of Professor Willey's motion, the same was propounded by the chair and the motion was lost.

**President Mason**: Let me suggest one thing to the gentlemen of the Association, and I include myself in the suggestion: that instead of trying to change Chapter 125 that every one of us read it carefully section by section at least once a month. I do not think it would be bad if we had two rule days a month. That is an old chapter prepared, as has been stated, by an eminent and able body of lawyers in 1849. After the constitution of 1851 it was overhauled in 1860; after the constitution of 1863 many modifications were made to it

in 1869; and after the constitution of 1872 some amendments were made to it in 1872-3; but the chapter as we have it now was overhauled by a very elegant committee of the Legislature of 1882, and, as stated, since that there have been some few amendments.

**Secretary Peterkin**: The last regular order of business considered was No. 23 but we drifted down to No. 27, I would like to call for the regular order which will be No. 24.

**President Mason**: No. 24 is the report of the Committee on Banquet.

**Mr. E. M. Showalter**: Mr. President: I take it that the only report that is expected from the committee at this time is a report that will be in the nature of an announcement, and with that in view I will say that at 9 o'clock sharp this evening a banquet will be served to the members of the Association by proprietor Williams of the "Tavern." I believe most if not quite all the members of the Association already have received tickets of admission to the banquet, but if there are any members who have not yet received their credentials, they will kindly come to the desk and get them after the adjournment of the session.

**President Mason**: The next order of business in the meeting of the newly elected Executive Council and the report of special committees, including the Committee on the Torrens' Land System. Is there any report to be made?

Judge T. P. Jacobs submitted the report of the Committee on the Torrens' Land System, which was read by the Secretary, as follows:

**Report Of the Committee On the Torrens' Land System.**

To the President and Members of the Bar Association.

Your committee on "the Torrens' Land System" begs leave to report as follows:

At the last annual meeting of the Association additional members were appointed to assist the old committee and directed to prepare a bill for presentation to the Legislature adopting the so-called Torrens Land System for the adjudication and registration of land titles.

By a previous report to the Association a pretty full outline of the general features of the system was presented and published, which was the result of some correspondence, interviews and the investigation to some extent of preliminary treatises on the subject.

The committee has not yet been able to formulate a bill for your consideration at this time for various reasons, the principal one being the inability of all the members to convene at the same time and place.

We regard a full meeting as desirable for the reason that additional members had been added for manifest reasons.

While we regret our inability to report a bill at this meeting we feel no time has been lost, for the Legislature does not convene until 1907 and before that time we promise to have a bill and report in the hands of every member.

We expect to make a report and a bill and publish the same, so that the profession may have the opportunity of full investigation a very considerable time in advance of the meeting for the year 1906.

At this time it is proper to say that the subject is being generally considered and more or less agitated throughout the country. It is a very important and interesting subject and will not down at any bidding.

The matter involves nothing less than the complete revolution, if adopted, of the recordation and registration system of the State and should not be hastily adopted or rejected.

It behooves the Association, therefore, to give the subject grave and deliberate consideration before taking decisive action one way or the other.

This body is as able to deal with the matter as any like body in the country, and it is believed when it decides the question its judgment will meet the approbation of the people at large.

We promise, in conclusion, to lay the subject matter before the members in ample time to permit a thorough investigation of the merits of the proposed system in advance of the next annual meeting.

Respectfully submitted,

THOS. P. JACOBS,
W. P. WILLEY.
Committee.

**President Mason**: What shall be done with the report?

**Mr. W. P. Hubbard**: I move that the committee be continued, with instructions to carry out their promises.

**President Mason**: The motion is that the committee be continued.

The question being propounded by the chair the motion was carried.

**President Mason**: Next is the report of the Committee on Uniformity of Legislation.

**Secretary Peterkin**: I have received by mail a report from Mr. W. W. Van Winkle, who constitutes that committee. I believe he is also a member of the committee of the National Bar Association, from this State, on the same subject.

The report was read by the Secretary, as follows:

**Report Of the Committee On Uniformity Of Legislation.**

To the West Virginia Bar Association.

Your Committee on Uniformity of Legislation submits the following report:

At the meeting in 1903, one question for discussion was: "Why should not the next session of the Legislature adopt the Codification of the Law of Negotiable Instruments now in force in Virginia and elsewhere?" This Association approved the suggestion and recommended to the Legislature the passage of not only the Negotiable Instruments Law, but as well the Act to appoint Commissioners for the promotion of uniformity of Legislation in the United States.

Acting upon the recommendation and having the cooperation of the Hon. Amasa M. Eaton, Chairman of the Committee on "Uniform State Laws" of the American Bar Association, both bills were introduced for passage in the Legislature and their enactment urged without success. It is the purpose to introduce these measures in the next Legislature, to urge their passage strenuously. If successful only in the passage of the Act appointing Commissioners, without an appropriation, an advance will occur to place our State in touch with Commissioners with other states that have adopted uniform Legislation, and in which our State is tardy. The Committee suggests and wants your recommendation.

The adoption of the Negotiable Instruments Law that has been enacted in most of the states, and to which were added Kentucky and Louisiana in 1904, embracing in all, where such uniform legislation attains, twenty-three states, one territory, and the District of Columbia. The importance of bringing into harmony the several states on this important branch of the commercial law is plainly apparent. The diversity results in injustice to holders of commercial paper as is known in a recent case within the knowledge of your Committee. Ohio adopted this law in 1902, Negotiable paper made in that State and payable there was protested and in a suit in West Virginia the holder was denied relief.

Thirty-three states have authorized appointment, and thirty-one have appointed Commissioners which meet annually in conference relating to laws of uniformity, and make recommendations to their several states. All agree to the necessity of the Negotiable Instruments Law, and have under discussion the form of uniform laws on the subjects of: Marriage and Divorce; Sale of Goods, Conveyances, Depositions, Uniform Incorporation Laws, and other subjects. That our State is progressive is beyond question, but it is not advancing in the adoption of laws necessary to increased population and large exchanges in business.

Respectfully,

W. W. VAN WINKLE,
Committee.

**President Mason**: What shall be done with the report?

**Mr. J. W. Vandervort**: I move that the report be received and filed.

**President Mason**: If there is no objection the report will be re-

ceived and filed. Are there any other special committees ready to report?

**Mr. George E. Price**: Mr. President: There was referred to some committee, of which Mr. Hubbard was the only member present, a resolution introduced by Judge Jacobs in regard to the naturalization laws. I desire to submit the following report:

"The undersigned members of the committee to which was referred the resolution offered by T. P. Jacobs, recommending that the naturaliization laws be changed so as to confer upon the Federal Courts the exclusive jurisdiction to admit to citizenship by naturalization, beg leave to report that in their opinion it is not expedient for this Association to recommend such a change in the naturalization laws.

GEO. E. PRICE,
W. P. HUBBARD."

**President Mason**: If there is no objection the report will be received and filed. The next item of business is the report from the delegates to the American Bar Association—Mr. James F. Brown, Judge Bennett and Mr. Nelson C. Hubbard. Have any or all of these gentlemen a report to make?

**Mr. Nelson C. Hubbard**: I suppose I am the only one of the three that is here. Judge Bennett was in town before noon and between him and myself it was agreed that he should make a statement for the three of us; but I believe he went away on the afternoon train. It seems that none of the three was able to attend the meeting of the American Bar Association. Judge Bennett's reason was that he was not sure that he was the Bennett who was named, but there was a significant twinkle in his eye when he made the statement. I do not know what his other reason was. Why Mr. Brown was unable to go I cannot say. I regret very much that I could not go, particularly because I think I would have enjoyed the meeting but more particularly because I felt grateful to the Association for making me a delegate. But it was impossible for me to go and I can only say for the three of us that there was some good reason why none of us could attend.

**President Mason**: The next item is miscellaneous business. If there is nothing under that head the standing committees as appointed by the newly elected President will now be reported by the Executive Council.

**Mr. W. P. Willey**: The President-elect, Mr. John W. Davis, has made his appointments and they have been approved by the Executive Council. They are as follows:

(See list in front of book.)

**President Mason**: That concludes the programme as prepared by the Executive Council. Is there anything further, gentlemen?

**Mr. A. L. Lehman**: The Committee on Admissions has an additional report to make.

**Second Report Of Committee On Admissions.**

Hon. John W. Mason,
President West Virginia Bar Association,
Sir:

Your Committee on Admissions begs to report to you and through you to the Association the names of the following applicants for admission to membership in the West Virginia Bar Association, namely, Chas. A. Showacre, Moundsville, West Virginia; Fred O. Blue, Philippi, West Virginia; R. W. Monroe, Kingwood, West Virginia; S. M. Hoff, Harrisville, West Virginia, all of whom have complied with the requirements of the constitution, and it affords your Committee great pleasure in nominating for membership in the West Virginia Bar Association each of the above named attorneys, who are members of County Associations except Mr. Monroe and Mr. Hoff, there being no local association in the counties where they reside.

Respectfully submitted,
A. L. LEHMAN,
Chairman Committee on Admissions.

**Mr. B. L. Butcher**: I move that the Secretary be authorized to cast the vote of the Association for each of those gentlemen named in the report.

The motion was propounded by the chair and carried.

Thereupon, the Secretary cast the vote of the Association for the gentlemen named and the President declared that they had been duly elected members of the Association.

**Mr. James C. Frazer**: Mr. President: I perceive that it has been the custom, and I am certain it is a very delightful duty which devolves upon this distinguished body from year to year, to offer a resolution of thanks to those to whom we rest under obligations. I therefore move you, sir, that the thanks of the Bar Association of West Virginia be extended to the citizens of Fairmont for their hospitality; to the hotels of Fairmont for their care and kindness; to the newspapers of Fairmont for their courtesy and accurate reports of our proceedings; to the various railroads that have furnished transportation at reduced rates; to the Fairmont and Clarksburg Traction Company for their annual passes; to the Elks' Club for its hospitality; and to the bar of Fairmont for the very handsome manner in which they have entertained us during our stay here.

The question was propounded by Mr. Frazer and the motion was adopted by a rising vote.

**Secretary Peterkin**: Before we adjourn I think it would be well to mention one other thing. When Mr. Wamsley invited us to hold

the next annual meeting at Elkins he referred to the present inadequacy of the hotel facilities there but said he hoped the new hotel they are building would be completed before that time. In view of the fact that there seems to be some doubt about it, I would suggest, if anything should happen that the meeting could not be held at Elkins, that the Executive Council be authorized to select the place of meeting, and I make a motion to that effect.

The question was propounded by the chair and the motion was carried.

**Mr. W. W. Brannon**: Before we adjourn I desire to make reference to what I regard as being appropriate under the head of No. 27. But little has been said, if anything, with reference to the very admirable and able address of our President, and I think the reason of it is that there was nothing to be said because we all accepted it as embracing the soundest political doctrine and the best governmental discussion that we have heard for a great while. I think we ought to give some attention to the recommendations and suggestions of our worthy President, presented by way of his annual address, and I therefore move that it be referred to the Committee on Legislation, with the understanding, of course, that the committee will give such attention to it as its importance demands. We all appreciate the great importance of what the President has said in regard to the corruption of our elections. I happened to be chairman of the committee of one of the political parties in Lewis county at one time and after having had my experience in that line I assured Judge Bennett that if he would select as many as four real good Democrats, four real good Republicans, a couple of Prohibitionists and a couple of Populists, and send them all to Moundsville as representatives of that department there, if such a thing were possible, (that was while I was on the Pardon Board) that I would see that not one of them was pardoned without the most substantial cause. This question of corruption and debauchery in our elective franchise is becoming intolerable. I agree with what the President said and am willing to do what I can to enforce his views.

**Mr. B. L. Butcher**: I want to second the motion and I want to say in support of the resolution that one of the things discussed in that annual address struck me as being very important, and it is one that I have heard about from other sources and I think it is practicable. I refer to that special suggestion of the home owner feature. We are discussing the question of taxation in the State of West Virginia and I think the home owners ought to be encouraged. A few years ago I was associated with some gentlemen who were interesed in educational affairs— one from the State of Georgia. We were discussing the subject of national education and the reasons for it and among other things this old man Orr, from Georgia, insisted that it was very important to the State of Georgia. He was

discussing the negro question in that country and he said he had found out how the negro question was to be solved. He said one of the features that had developed in the history of that State was, that whenever they found a negro with a little education and the ability to acquire some property—in other words whenever he became a home owner—he immediately voted the Democratic ticket. * * * * *

(The stenographer was unable to understand Mr. Butcher sufficiently to get a satisfactory report of his closing remarks.)

**Mr. W. W. Brannon:** I move that the matter be referred to the Committee on Legislation to investigate the subject and to report to this body at its next annual meeting, and to prepare and present a form for a bill for the purposes indicated by the President.

The question was put by the Secretary and the motion was carried.

**President Mason:** Before we adjourn I want to say that I have enjoyed these two days very much indeed, unaccustomed as I am to presiding over public bodies. You have certainly made it very easy and very pleasant for me, and I do not recall any two days that I have enjoyed more than the two that have just passed. I have not only enjoyed the able discussion of matters important to the State in general, but I have also enjoyed the exceedingly great pleasure of meeting so many of you from the different parts of the State.

On motion of Mr. W. N. Miller the Association adjourned **sine die.**

# APPENDIX.

## APPENDIX I.

(Annual Address of President John W. Mason,)

**West Virginia Election Laws.**

Gentlemen of the Association:

I beg to assure you that I appreciate most highly the distinguished honor you have conferred upon me by electing me President of this Association,—an association composed of the most learned and influential men of the State.

I am persuaded that you who know me well realize what a task it is to me to prepare a paper which may with propriety be dignified with the name of an address, and will endorse my words when I say that I would gladly stop here, and call these remarks my address, and proceed with the regular order of the business of the Association, but in view of the requirements of the constitution and the examples set me by my distinguished predecessors, I should at least put myself in a position that attorneys are often compelled to occupy, when filing demurrers. They must say something in their behalf, to prevent the court from stating in the order that nothing was alleged in support of the motion; I should sufficiently comply with the mandate of the constitution, so that when the proceedings of this session are made up the record may show that "here the President delivered his address." It is a good rule, that, when a person has nothing of importance to say, he should be silent, but I assume that this rule will be relaxed in favor of one who is compelled by constitutional mandate to speak. It is always pleasant to discuss subjects about which men generally agree. When I invite your attention to some reflections upon the election laws of our State, I cannot hope that all will agree with me, in the conclusions I shall reach, and hence a more agreeable subject might have been selected. As elections by the people are always associated, in some degree, with partisan politics, it is difficult to agree even upon the methods of procedure, but I am of opinion that there are some principles so just and essential to good government; and some so dangerous and pernicious, that we may find some common ground on which all good citizens can stand.

Every true American, possessing a spark of patriotism, values highly the privilege of casting a vote at all public elections. He feels, and it is proper that he should consider it, that in casting his ballot he is performing an important function of government. Every honest voter strives to convince himself that he may go to the polls with his fellow citizens without danger of intimidation, and with the confident assurance that the ballot deposited by him will be counted as intended. It is one of the beautiful theories of our government, that at stated periods, the freemen of the country, in every section, may assemble in their respective neighborhoods, and there express themselves freely, honestly and concientiously upon the policies, best suited in the judgment of the voter, to enhance the general welfare. Adopting this theory we must assume that all voters love their country, and are attached to its institutions; that they cast their votes after careful investigation, and mature thought, in support of the principles, in their opinion best adapted to promote the true interests of the country, and for none but honest and capable men—in short that each man's ticket reflects his own judgment. The result of such general and honest comparison of views, would be the adoption of policies approved by the best judgment and the conscience of a majority of the whole country.

An ideal general election is beautifully and eloquently described by James A. Garfield in the memorable address delivered by him in the Republican Na-

tional Convention at Chicago in 1880, presenting the name of Senator John Sherman as a candidate for President of the United States, he said;—"Not here in this brilliant circle where fifteen thousand men and women are gathered, is the destiny of the Republic to be decreed for the next four years. Not here, where I see the enthusiastic faces of seven hundred and fifty-six delegates waiting to cast their lots into the urn, and determine the choice of the Republic; but by four millions of Republican firesides, where the thoughtful voters, with wives and children about them, with the calm thoughts inspired by love of home and country, with the history of the past, the hopes of the future, and reverence for the great men who have adorned and blessed our nation in days gone by, burning in their hearts,—there God prepares the verdict which will determine our work tonight."

When we view elections from this elevated plane, with the assurance that we may attribute to all voters these noble impulses and patriotic motives, we feel proud of our country and countrymen, and an abiding faith in the perpetuity of our free institutions. Would that upon the morning of every general election, the most sacred day of all the year to every true American, we could stand erect with conscience void of offense toward our government and its laws, proudly contemplating our great country, recounting its glorious past, and anticipating its splendid future, feel that we were about to engage in a friendly and patriotic battle with ballots, testing the strength and wisdom of principles and policies, marching under different captains, attached to separate armies, but fighting in a common cause,—all endeavoring to accomplish the same purpose.

But, let us not deceive ourselves. No man is credulous enough to believe, that all voters prepare their ballots controlled by these lofty motives. It is useless and indeed, unwise to close our eyes to the things around us, or attempt to disguise the fact that corruption, bribery and fraud prevail to an alarming extent among certain classes of voters. I am not an alarmist, nor a pessimist. I have no patience with the men who are continually predicting the downfall of the Republic. This government will not be destroyed, because the good men of the country will not permit its assassination. I am not here to deliver a funeral oration, but to call attention to some things which are impeding the nation's growth and strength and to suggest that the surgeon's knife be applied boldly and fearlessly.

Is it true that our election system is insufficient, and some of our voters are being debauched? If so, let us not sit down and weep and wail and bemoan our condition. Let us seek the remedy and apply it. The country is still in the hands of its friends. In purifying our elections, the first step is to free the rolls of the names of all persons who for any reason are not entitled to vote. Let elections, be contests between legal voters. No true man will cast an illegal vote, or induce anyone else to do so. However well a man may stand in society, he cannot corrupt a voter, inducee a man to vote who has no legal vote, or approve the making of false returns of an election, and be loyal to the institutions of his country. The man who, in any way, promotes fraud in elections is not a good citizen. It is folly for a man to claim that he is for the country and be engaged in a conspiracy against it,—be doing what would destroy it. The man who wilfully disregards the duties he owes his country in elections, should forfeit his vote.

Our Legislature, at its last session, inaugurated a new and somewhat novel system for the punishment of a person who sells his vote or agrees to refrain from voting. The penalty is disfranchisement. This is a long step in the right direction. But it occurs to me that the Legislature should have gone a step further and have provided for the punishment of the purchaser as well as the seller. If there be degrees in the offense, surely the man who with his money tempts a poor man to dispose of his vote, or refrain from voting, is worse than the man who yields to the temptation. The purchaser in such cases is usually a person of higher order and better standing in society, and the punishment

of such person would be more effective. The true policy as it occurs to me would be to treat alike the purchaser and seller. It is the kind of an offense that requires at least two to commit.

This statute also prohibits "any voter asking or soliciting money from any candidate, before any primary or general election." This clause, if enforced, will destroy a most fruitful as well as embarrassing source of debauchery in elections. The importunacy of certain classes of voters has become so offensive and disgusting that in many instances good men are prevented from becoming candidates. They beset the candidate on every hand under the most distressing circumstances. Like the common highwaymen, they deliberately hold up their victims and demand the price of their support; to yield is to become a party to the offense, or at least condone the wrong; to refuse is to be defeated. Many of the churches avail themselves of election seasons to make demands from candidates,—soliciting money from men who would never be expected to pay one cent were they not candidates. Is it possible that the good churchmen do not realize that they are tempting their brethren to sin? Whatever may be the motives of the men who solicit the money, the candidate understands that he is simply buying votes. He does not expect to receive any credit in the "hereafter," for church contributions made under these circumstances, hence he contributes according to the size of the church roll, and the probabilities of the delivery of the votes. Not much may be said of either side, but the solicitor knows full well why he makes the demands at this particular time, and the candidate knows why he has so suddenly decided that it is his duty to be very liberal toward the churches.

If this act of the Legislature breaks up this practice the people of the State will have good cause for being grateful to the members of the last Legislature. Then having to some extent purged the registration list, let us next see there are kept off these lists the names of men who are incompetent to perform the duties of citizenship. Every year many thousands of ignorant and vicious foreigners are placed on the rolls as legal voters, who know no more about our form of Government and the policies by which it should be controlled than the man who has never seen or heard of this country. Enough of this class of voters may be found in this country, who, if voting together may have the balance of power, and thereby determine the policies of the government. A distinguished Canadian, (Valancey E. Fuller) recently said in a carefully prepared magazine article:

"The United States is no longer governed by votes of Americans, but by foreigners, many of them illiterate, ignorant of the laws of the land, and lacking in sympathy with them even, when, they do know them. A vote is with the majority of them a marketable commodity, to be given to the highest bidder—not to put in office a man who will give the best service to his constituents, but the man who will see that those who vote for him will get a return in the shape of a 'fat job' for themselves or their friends."

This is a harsh criticism. The writer, perhaps, exaggerates the influence of the foreign vote in this country, but there is enough truth in the charge to make us hesitate and consider whether or not this country is not in danger of being controlled by men who have little or no interest in our public affairs. It must be apparent to the most casual observer, that from the training, education and environments of the lower classes who ask to be naturalized here, that they know nothing about the institutions of this country, and care less for them. They would adopt any other country as readily as this if it suited their pecuniary interests. It is a lamentable fact that many of them are ignorant and vicious,—many of them unable to speak our language. It will forever stand as the one great reproach to American Judges that in many cases they have solemnly ascertained at the bar of the court, and duly certified that certain men are attached to the principles contained in the constitution of the United States and well disposed to the good order and happiness of the same, who never heard of the constitution, and have not the remotest idea of what

it contains; whose only objects are to secure votes to be used as merchandise. Many of them are not only ignorant and lawless, but have been driven from their native land because they are socialists and anarchists and disturbers of the public peace. Some of them cannot even make known their wishes to the court, except through an interpreter. So long as the courts flood the country with a voting population like these men, no method of conducting elections can be devised which will be sufficiently strong and perfect to secure honest results. As a rule, to which few, if any, exceptions should be made, no man should be naturalized who cannot speak the English Language. The information which most of us have upon public questions, we derive from communications with our fellow citizens. Separate us into communities speaking different tongues, and we will have as many different and diverse opinions as we have of these different communities. We will no longer have any unity of thought or action, or any coherent strength. When God determined to stop the building of the tower of Babel, He did not send disease, war or pestilence, or place any restraint on the liberties of the workmen, He simply confounded their language, so that they could "not understand one another's speech," and the enterprise failed. Men who cannot communicate with one another cannot successfully carry on any business requiring concert of action. How then can it be hoped, that without consulting together, and acting in harmony with our follow citizens we can carry on the stupendous work of conducting properly the affairs of a great government whose success depends wholly upon the intelligent and harmonious action of a majority of the people?

Then, as an essential element in purifying our elections, let us see to it, that the courts naturalize none but men of good moral characters attached to the principles contained in the constitution of the United States, and who have clearly proven by their conduct that they will become permanent citizens of the Republic. Men who are willing to aid us in bearing the burdens of citizenship and performing the duties required of all citizens; who will stand by and support the government in hours of peril; who will be for the country in adversity as well as in prosperity; not tramps or vagabonds, nor men who are worthless at home and abroad. Lest I should be misunderstood, I desire to add that these criticisms do not apply to the thousands of men who were born in other lands, and are now among our best and most substantial and patriotic citizens. These men came here to establish homes; bringing with them their property and families. They have truly renounced forever all allegiance and fidelity to the fatherland. They have made our flag their flag, and are Americans by their deliberate choice, as true and loyal as the man who was to the manor born.

Even with fairly honest and intelligent electors, it is exceedingly difficult to determine what system of holding elections will most likely secure fair and honest results. Within the lifetime of many of us, three systems have been tried. First the **viva voce** system; this system had its merits. Elections under this system were conducted by the sheriff or one of his deputies, or the mayor of a city or town. Then the voter cast his vote under the eye of an officer whose duty it was to superintend the election, and see that all legal voters had an opportunity to vote. The results of the election could be declared as soon as the polls were closed. Any citizen could easily keep tally as the election proceeded and ascertain the results as early as the officers conducting the election. There could be no juggling with the returns. The records kept by the clerks showed the result of the election the moment the last vote was cast. But this system is subject to the objection that it prevents secret vote. The voter subjects himself to the punishment any one having control over him might see proper to inflict, and it affords an opportunity to the purchasable voter to prove beyond question that he has delivered the vote as agreed upon, and to demand the price. Another objection is that with our large voting population, this method is too tedious, and for this reason impracticable. For many years in the early history of Virginia, all legal voters were required by

law to vote or offer to do so, and for failing to do this, a fine could be imposed. Our forefathers, then, recognized the principles for which I have been contending, that it is the citizen's duty to vote and not a mere privilege. The voters in those days were limited to persons who owned some interest in real estate. This was required, not because the landowner was more likely to be an intelligent man than the man whose property consisted of personal estate, but to limit the voters,—the man who determined the policies of the State—to the **bona fide** citizens. I will not say that this qualification should now be required. It would not be just nor wise to punish the poor by disfranchisement, but it would, in my judgment, be a wise policy, for the State to offer some inducements to all its citizens to become landowners, at least to the extent of owning their own homes. The strongest governments on earth are the ones in which the people own their own homes. Very few men care to fight for the protection of the property of a harsh landlord, but they will die in defense of their own. The affection for the old homestead, which all men are conscious of, is not a mere poetic fancy, or the creature of imagination. It is one of the purest and noblest sentiments of the human heart,

"The old love for the old place, that deepens as age comes closer,
The heart keeps sighing and singing,
There is no place like the old place."

Few men become so degraded that reference to the homes of their childhood does not touch a tender chord in their natures. The man who loves his home loves the country that protects it. It has long been the policy of this country to give protection by legislation to our mines, factories and workshops. It occurs to me that it would be well for our legislators to do something to increase the number of the home builders. The people of the State, should in my opinion, so amend the State Constitution as to exempt from taxation one-half the value of the homestead in the actual possession and occupation of the owner as a home for himself and family, not exceeding in the aggregate the value of $1000.00,—that is an exemption of not more than $500.00. This would be an inducement to heads of families to become owners of property, and as a consequence, permanent citizens. Having interests to look after, they would be more careful what kind of laws are enacted and how they are enforced. And whatever tends to make good citizens lessens the difficulties in enforcing the election laws.

The law which required the voter to have some interest in real estate became unpopular, its supporters were accused with attempting to build up a "landed aristocracy," and it disappeared after the constitution of 1851. When the new State of West Virginia was created, its constitution provided that, "in all elections by the people the mode of voting shall be by ballot." The new system was introduced by the acts of the Legislature of 1863. Under this law, the voter was required to present a single ballot of white paper, containing the names of the persons for whom he desired to vote, and designating the office he desires each of them to fill; which ballot should be so folded or rolled that its contents could not be seen. This system remained in force for twenty-eight years. It is perhaps the plainest and simplest system that could be devised, and would be satisfactory if voters and election officers were all honest. The tickets were prepared by the voters and might be prepared as they desired before coming to the polls. This system, however, offered great opportunities to the officers conducting the elections to introduce false ballots into the boxes, without any means of detection. It also gave opportunity for the circulation of bogus tickets, deceiving the voter often into voting for persons he did not intend to vote for. The rougher elements among partisan politicians often gathered around the voting places and in their efforts to force their tickets into the hands of voters, converted elections into mobs. Bogus tickets, containing the names of persons, not candidates were so often circulated and intermingled with genuine tickets, that in the confusion and disorder, few men could avoid

mistakes, and these occasions often became so disreputable that decent and peaceable men often avoided them and refrained from voting.

In 1891, the present system was inaugurated. It must be conceded that in most respects it is superior to either of the preceding ones. All the tickets are provided by the election officers, and the opportunity to use bogus ones removed. The State, through its proper officers, takes charge of all the machinery. It is almost impossible to "stuff" the ballot box without a conspiracy participated in by all the officers. But no chain is stronger than its weakest link, and there is one defect which tends largely toward vitiating the entire system. The official ballot must contain all the different tickets; each ticket must contain none but the names of nominees, or persons entitled to be voted for on that ticket; the voter must make up his vote from one ticket, and therefore, vote a "straight ticket" or take the risk of destroying it by erasures, and thus losing his vote, or if in doubt how to prepare his vote, he may call the poll clerks to aid him. The effect of this method is to force men to vote for the ticket and not for men on the ticket. The only alternative for the man who is unable to prepare his ticket is to call to his aid the poll clerks. This, in my judgment, destroys the efficiency of the system. Suppose the poll clerks are dishonest, or have been placed there for the purpose of committing frauds upon the voters; they can accomplish their purpose with no danger of detection. The man who cannot read or write, cannot possibly know whether or not his ticket has been made out as directed by him, and there can be no other witness to the crime. Enough votes may be secured in this way to change the result of any election if the corrupt clerks can be procured. No law should continue on the statute books which affords such easy avenues of fraud. I will not say we should return to the old ballot, when fraudulent and misleading tickets were as abundant as forest leaves in summertime, and ballot box stuffing could be indulged in with impunity, but certainly our Legislature can devise some better means of aiding ignorant voters in preparing their tickets. Let me suggest a remedy. Let the ballots be prepared, identified, delivered to the voter, and taken by the voter into the booth, as at present authorized by law; but do not permit the poll clerks or any one else to accompany the voter into the booth. Require the voter to prepare his own ticket, and in order to simplify the ticket, so that any one, whether he can read and write or not, may prepare his ticket, let it be made up from the entire ballot, by marking with a cross, or in some other manner the name of the person the voter desires to vote for, instead of erasing all but one ticket, and inserting the names where changes are desired. By this means, no name would be written. Then, permit the voter to take into the booth a sample ballot previously prepared by him, and aided by such of his friends as he may wish to advise with. Aided by this sample ticket, any man of ordinary intelligence could prepare his ticket. Then the ballot cast by him would be secret, or any assistance required by him would come from persons selected by himself. The man who could not make out a ticket in this way is too ignorant to have a vote. To this there should be one exception. A voter who has had the misfortune to lose both hands, or have them so disabled as to make it impossible for him to make the marks indicating the names of the persons for whom he wishes to vote, should be permitted to have someone mark the ticket under the direction of the voter, and in secrecy.

It occurs to me that some changes in our election laws along the lines indicated would be well received by the law abiding people of the State. No political organization, favors graft, or any kind of corruption in politics. It is only a comparatively few individuals who desire this. The men who force themselves into such organizations for corrupt purposes, and being without merit, depend upon fraud and bribery to secure an election. These men are bold and daring, as well as shrewd, and often deceive and force their associates to aid them. Why should any political organization tolerate such men? There are at least two ways of forcing these law breakers out of business. One is to

so perfect the law as to make it more difficult for the offender to violate it, and another way is to punish him for violations. Prudence would suggest that both remedies be applied. There is no reason why great political organizations formed for wise and patriotic purposes should be discredited and even destroyed by a few corrupt adventurers, or why the honest and conservative voters of the State, without regard to political affiliations should submit to have the majorities, as honestly expressed, reversed by fraud and bribery. The better classes, who are largely in the majority, disregarding politics, will readily join in any honest effort made by the people as a whole to purify politics. We need some practical legislation on the subject. It should be made a part of the official duties of all prosecuting attorneys to make a careful investigation after every election, and report to the court and grand jury every violation detected. The men—usually the minority men—who so vehemently cry fraud after elections should in all cases be sent before the grand juries, and required to make known the cause of their complaint there, as well as in the newspapers.

The law should be so explicit and mandatory as to leave the officers of the court no opportunity of disregarding it without subjecting themselves to punishment, and so specific in its application to all offenses of this character that the prosecuting attorney who does his duty cannot be accused of attempting to punish his enemies. It should be so plain and strong that a prosecuting attorney cannot avoid the duty without being himself a violator of the law; often offenses against the election laws are not enforced because the officers charged with the duty fear they will be accused of partisanship. The law should be so imperative as to relieve the courts and officers from the charge.

But gentlemen, the best and about the only effective means of preventing these violations of law, and fraudulent practices, is by an appeal to the public conscience. No man in private or public life in this country, is so popular and powerful that he can resist the force of public opinion.

The oft repeated edicts of the courts, and the untiring vigilance, of their officers will be "as sounding brass or a tinkling cymbal" unless sustained and supported by public sentiment. If these laws are not enforced the sin does not all lie at the door of the courts; the indifference of the law-abiding people, and the active obstructions on the part of the lawbreakers make it difficult,—almost impossible—for the courts to enforce them. It will be a reproach to our courage if the will of an overwhelming majority of the people shall be suppressed by the audacity of a few men, using corrupt methods, to accomplish selfish purposes.

I know of no class of men so well prepared to set in motion a successful reform, in our election laws as the gentlemen of the bar. In all the great reforms throughout the civilized world, whether in State or in Church, the lawyers have taken prominent parts, and none has ever failed to which they gave an active, united and earnest support. If the gentlemen of the bar in every part of this State, would solemnly adjudge, order and decree, that hereafter we should have a free ballot and a fair count, it will be done. The grafter, the briber, the bribe-taker, the ballot-box-stuffer, the corrupt poll-clerk, and debauched return-board would then, retire as quietly and gently as the mists of the morning disappear before the rising sun.

Gentlemen: Perhaps no opportunity will ever again be afforded you of performing such a noble and patriotic service for your State.

## APPENDIX II.

(Paper of A. M. Poundstone, Esq., of Buckhannon.)

### Proceedings In Causes Before Judgment Or Decree.

Remedial law has occupied a large share of the attention of this Association. And for good reason, as it is certainly very desirable to have this branch of jurisprudence on the highest possible plane. It has been my humble purpose in the preparation of this paper to make some suggestions which may lead to a discussion of this subject with the view of devising methods of pro-

cedure more perfect if possible than at present and recommending same to our Legislature for enactment into law. Ten years ago I had the honor of reading before this Association a short paper entitled "The Maturing of Causes," and recently a friend and member of this body suggested that I be called upon for a paper on Proceedings at Rules. The paper I now read is the outcome of that suggestion, but instead of limiting myself to Proceedings at Rules I have taken up the subject of "Proceedings in Causes before Judgment or Decree," with the design of referring to a few of the stages connected therewith and my present paper may properly be considered, a revised and enlarged edition of the one formerly read. Some matters referred to in my former paper and in the discussion following the reading thereof, afterwards became the subject of legislation, particularly section 16 of chapter 125 of the Code, which formerly provided that a plea in abatement to the jurisdiction of the court should not be received after the defendant has pleaded in bar or answered to the declaration or bill, after a rule to plead or a conditional judgment, or decree nisi. The effect of that section was to require the defendant to file plea in abatement to the jurisdiction at the same rules at which declaration or bill was filed. In my former paper I criticised the propriety or justice of that requirement in the following language: "The effect of the provision in section 16 may be illustrated in this way: A plaintiff may have process sued out of the Circuit Court of Upshur County immediately before say November Rules returnable to said rules against a defendant residing in Ohio County, have the same served, file declaration or bill at same rules, and thereby prohibit defendant from filing plea in abatement to jurisdiction for want of time." In the discussion following the reading of that paper Judge Jacob among other matters used the following language: "The essayist seems to think in such case he would be without remedy. It seems to me if you will refer to a case in 27th Grattan's Reports and possibly one other there cited you will find there held that in such circumstances the court is wholly without jurisdiction and it becomes the duty of the court, upon its attention being called to that fact, to dismiss the cause as improperly on the docket without jurisdiction." The Judge's criticism was based on the idea that the process in such suit was directed to and served by the sheriff of Ohio county from which it would appear upon inspection of the record that such process was illegally issued and served. This is no doubt correct, but in the illustration I gave, the thought in my mind which unfortunately was not expressed, was that the process was directed to the sheriff of Upshur County and served in Ohio County by a private individual and oath of service made without disclosing where defendant resided or where process was served upon him. In such case plea in abatement will be required to show want of jurisdiction by statement of the facts. This statute has since been amended to allow plea in abatement in such case to be filed at next subsequent rules, and I refer to it now in vindication of the wisdom of the amendment.

It is a matter of congratulation that the criticism and discussion thereof in this Association probably led to its amendment. It was said by the same gentleman to whom I have referred in the same discussion, quoting from him, "I am not one of those who believe that all change is reform, and hence it is that it is with a great deal of diffidence and conservatism that I would advise any change." There is no doubt an aversion to change among our profession generally, which demands a very substantial and conclusive reason for the change, but nevertheless it is a fact that numerous changes have been made in the common law procedure by statute, and they have met with the concurrence of the profession in almost every instance. It will not do to conclude that those who from age to age built up the splendid fabric of the common law were perfect, that they were the people and that "wisdom died with them." Neither can we safely conclude that former Legislatures were inerrant or infallible. The world moves and conditions are constantly arising which demand modifications of former methods, and this in legal as well as in other

matters. No doubt the members of this Association are averse to frequent and ill-devised changes in the law and there has been nothing in our proceedings to indicate to the contrary, but when it is demonstrated that change will be beneficial and in many instances a necessity I submit there should not be any hesitancy in bringing it about.

Coming more directly to the duty required of me, namely the treatment of Proceedings at Rules or the bringing and maturing of civil causes **in courts of record**, and the steps connected therewith in our State; with the view of comparing our methods with those of a number of our sister states for the purpose of determining whether we can improve on our present mode I placed myself in correspondence with lawyers in the states of New York, Pennsylvania, Maryland, Kentucky, Tennessee, Ohio, Illinois and several other states. The gentlemen to whom I wrote in those several states, although I was a stranger to each of them, very courteously and promptly responded to my requests and gave me outlines of the procedure in their respective states, which after abridging same as to states above named where it could be safely done I have at the risk of being tedious embodied in my paper. I have had to omit proceedings received from other states for want of time and space.

**NEW YORK.** In this State proceedings both in actions at law and suits in equity, as to practice follow the rules laid down in their Code of Civil Procedure. All such actions are commenced by summons usually a **verified** complaint accompanies the summons and in that case the defendant has twenty days to answer or demur by serving an answer or demurrer on the plaintiff's attorney. In case he fails to do this, if it is an action for a sum of money in which the amount can be definitely fixed, judgment can be taken by default. In cast of an action for damages or injury to personal property, judgment cannot be taken without application to the court upon notice for assessment of amount of damages. When a **verified** complaint is served on the defendant he has to serve a **verified** answer within twenty days after the service of the complaint. When proceedings are at issue as the result of an answer having been served on the plaintiff's attorney either side can notice the action for trial by giving fourteen days notice upon the opposing attorney and filing with the clerk a note of issue setting forth the title of the cause at least fourteen days before the commencement of the court. If the cause be an equity suit the court tries it by the judge, otherwise it is either tried by a jury or sent to a referee by consent order of the court, and when verdict is rendered judgment is entered for the amount with taxable costs.

**Pennsylvania.** Courts of the several counties in that commonwealth are empowered to establish monthly return days so that the plaintiff may at his election make the summons returnable to the first day of the following term or to an intervening return day. The summons is issued to the sheriff and served and returned by him. In order to authorize the entry of judgment for want of appearance by defendant, the summons must have been served at least ten days previous to such entry. If after such service the defendant fails to appear, the plaintiff, having filed his **Statement of Claim,**—may have judgment for want of such appearance, and it is generally provided in the rules of court that judgment for want of appearance may be entered by the prothonotary (corresponding to our clerk) on order of plaintiff's attorney without application to the judge for an order directing it. In the ordinary civil action they have substituted for the common law declaration what is denominated in the statute **Statement** of **Claim,** which consists of a concise narration of the plaintiff's cause of action. In an action upon a contract the defendant may be required to answer this statement by an **affidavit** of defense setting out the facts upon which he relies to defeat the action. The plaintiff may cause an attested copy of his statement of claim to be served on the defendant with the summons or should the statement of claim not be filed in time to do this he may after filing serve the defendant with notice that it is on file and after fifteen days service of such copy or notice the defendant is required to file his **affidavit** of

defense. (There are certain persons exempt from making affidavit of defense such as personal representatives, committees of lunatics, etc). When the affidadavit of defense is filed if plaintiff thinks it does not set forth a good defense in law he may move for judgment for want of sufficient affidavit of defense. If the court regards the facts averred in the affidavit of defense insufficient in law judgment is granted to the plaintiff. If the court should rule that the affidavit sets up a good defense as to part of the plaintiff's claim but not as to the residue judgment may be taken for the residue and the cause would proceed in the usual manner for trial and adjudication of the other part of the claim. If no affidavit of defense be filed the plaintiff is entitled to take judgment by default. Special pleading has been abolished by statute, and it is provided that in an action ex-contractu the defendant may plead the general issue, payment, set-off, and the statute of limitations, but no other pleas. In an action for tort the general issue is the only plea allowed, all defenses including the statute of limitations being covered by this plea. The statute makes it the duty of the defendant to plead within fifteen days after the return day, and provides that in default thereof the court may on motion of the plaintiff direct the plea of the general issue to be entered for the defendant. The subject of giving notice of special matter admissable under any of the above-mentioned pleas is subject to regulation by the rules of the several courts. Of course the defendant may instead of pleading demur to the statement of claim, and if demurrer be overruled he may then plead and proceed in the usual manner thereafter. After plea is filed by the defendant the cause is ready for trial. After the cause has been reached and verdict rendered it stands for four days to give the losing party opportunity to move for new trial. If such motion be made it is heard and when disposed of or in case no motion for new trial be made then at the end of four days after verdict, the cause is ripe for the entry of judgment.

The procedure in courts of Equity is as follows: The manner of obtaining jurisdiction over the defendant and compelling him to appear is to serve him with a copy of the bill, upon which is endorsed a notice requiring him to appear in court within fifteen days after service thereof. The plaintiff may embrace in the notice a requirement that the defendant file his answer to the bill within thirty days after service of the notice, and if this be embraced the defendant is bound to answer within the time. If notice to file answer is not endorsed on bill when served, the plaintiff may afterward obtain a rule upon the defendant to answer within thirty days. The court has power for cause shown to extend the time for answering. If the defendant does not demur or answer within the thirty days or such further time as the court may grant, the plaintiff is entitled to have order entered for the bill to be taken pro confesso. If answer is filed general replication is entered. It is not allowed to file special replication making new avertments. If the plaintiff desires after answer to introduce new averments into the cause he must do it by an amended bill. If instead of answering, the defendant demurs to the bill and his demurrer is overruled he is still allowed to answer within such time as the court may fix. Suits in Equity are heard before the judge sitting as a chancellor who after the hearing is required to file separate and distinct findings of fact and law, which may be made the subject of exception within ten days.

**MARYLAND.** At Law, action is brought by titling alone or with a declaration. The titling simply gives the names of the parties and directs the clerk to issue summons for the defendant. They have in Baltimore and in many of the counties special laws known as "Practice Acts" which provide for more speedy recovery of judgments in contested causes and also provide for pleas to be filed under oath by defendant and requiring him to admit any part of the claim which he does not dispute. The summons is issued to a rule day or to the first day of the term and defendant is required to plead at the rule day fixed by the rules of the court. In suits brought under the Practice Acts the plaintiff files with his titling a declaration under oath setting forth the particu-

lars of his claim. If the defendant disputes the whole of the claim **under oath** the cause will then stand for trial at the next term of the court. If he admits any part of it and disputes the residue the plaintiff can either have judgment for the amount admitted or can go to trial for the amount of his claim. If plaintiff fails to recover more than the amount admitted he is required to pay the costs.

In suits in Equity a bill of complaint is filed by the plaintiff with necessary exhibits, whereupon summons is issued against the defendant returnable the first Monday of the succeeding month and the defendant has fifteen days to enter an appearance and twenty-five days thereafter to file a demurrer, plea, or answer. If he fails to appear or answer within the time required the plaintiff can obtain a decree pro confesso, which must lie in court thirty days, when the court will either enter a final decree upon the bill so taken for confessed or will direct testimony to be taken or depositions filed to sustain the allegations of the bill. If demurrer, plea, or answer be filed the cause may be set for hearing or the plaintiff may file a replication denying the averments of the answer and either party may then obtain an order of court to take testimony before one of the **standing examiners** of the court upon giving the other side notice of the time and place of taking the testimony. When the taking of testimony is concluded the examiner returns it to the court where it must lie ten days with the right to either party to file exceptions to the admissibility or relevancy of the testimony or to the competency of the witnesses. The cause is then set for hearing upon the pleadings, exhibits, and testimony, and decree entered accordingly.

**VIRGINIA:** I had no occasion for correspondence to learn the procedure of this commonwealth, as Barton's books owned generally by the profession in our State and the new Code of Virginia give all the information desired. The only fact I desire now to note as to the procedure in Virginia, is in that commonwealth they have rule days twice a month the first and third Mondays.

**KENTUCKY** has the Code system of procedure. An action at law is commenced by filing a pleading called simply a **petition,** and in a suit in Equity by filing a **petition in Equity.** In either case it is only necessary to state the facts constituting the plaintiff's cause of action. Except in counties having courts of continuous session the summons in an action both at law and in equity requires the defendant to answer within ten days after service thereof, if directed and served in the county where issued, and twenty days after service if directed to any other county. The first Monday in each month is a rule day in the office of the Clerk of the Circuit Court except when the court is actually in session. At the first rule day after the summons has been served ten days in the county where issued or twenty days in any other county, the defendant shall file his answer or other plea whether at law or in equity. On the next rule day the opposite party shall file his reply and any other plea he may have whether of law or fact, and so on at each succeeding rule day until issue is made up. If a pleading is not filed at the rule day when it is due it may be filed at a subsequent rule day or as soon as practicable, but the party filing it shall file therewith his affidavit as to cause of delay and if the court consider his excuse insufficient may at the next regular term strike such pleading from the file. Actions at law stand for trial at the first term after summons has been served, ten days in the county where issued and twenty days elsewhere. Suits in equity stand for trial at the first term after issue is complete or should have been complete, in thirty days before commencement of term. There are four counties in the State, Jefferson wherein Louisville is situated, Kenton wherein is Covington, Campbell wherein is Newport, and Fayette wherein is Lexington, which have courts of continuous session. In these courts the time for answer is twenty days after service of summons in county where court sits and thirty days if served elsewhere. In courts of continuous session any pleading subsequent to the answer is required to be filed in fourteen days after the pleading is filed to which it responds, but the court for good cause may extend the time. In courts of continuous session sixty days are treated as a term, and after the

expiration of that time the court loses control over its judgments and final orders. In these courts after an issue of law or fact or after the time for pleading has elapsed without same being filed either party may place the action on the common law docket for trial. In courts of continuous session in suits in equity thirty days must elapse after the issue is completed before the cause can be placed on the trial docket.

**TENNESSEE.** A succinct statement of the general course of procedure in this State prior to judgment in causes at law is as follows:—Action is commenced by summons. This writ cites the defendant to appear before the court at a certain term to answer plaintiff in a certain cause of action. This cause of action is usually stated in general terms in the summons. This summons must be served five days at least before the return day. At the return term the plaintiff has three days in which to file his declaration, the defendant has two days thereafter in which to file any necessary replication and the defendant two days to rejoin, and so on to issue. In certain causes such as actions of ejectment the declaration must be filed at the time summons is sued out and must accompany the summons. Prior to the issuance of summons **bond for costs** must be given or pauper oath filed. Non-residents are not allowed the benefit of the pauper oath.

Chancery courts are distinct from law courts. The process in chancery causes is called a subpoena. The first step is to file the bill containing the grounds of complaint, give bond for costs or take the pauper oath. The first Monday in each month is in Equity a rule day and every day in term time is a rule day. Upon filing the bill and executing bond for costs or filing pauper oath, subpoena issues returnable to a rule day. Copy of the bill accompanies the subpoena and is served upon the defendant. The defendant may demur, plead, or answer, and when issue is joined the usual method of taking proof is by depositions and each party is required to take his proof in chief in four months, and proof in rebuttal in two months thereafter. After which the cause stands for hearing.

**OHIO.** Under the Code of Procedure in that State distinctions **in form** between actions at law and suits in equity are abolished, yet as an able lawyer of that State writing to me says "the real distinction between actions at law and suits in equity cannot be abolished." All suits are denominated "Civil Actions." Time pleadings allowed are the petition, demurrer to petition, answer, (which when affirmative relief is demanded therein may be styled cross-petition) demurrer to answer, reply and demurrer to reply. To any of these pleadings divers motions may be interposed, such as to strike out redundant matter, to make same more definite, etc. The plaintiff may unite several causes of action in the same petition whether they are such as have heretofore been denominated legal or equitable, when they are included in clauses as set out in their statute. The only allowable grounds for demurrer are provided by statute, and the forms of pleading in civil actions in courts of record and the rules by which their sufficiency shall be determined are those prescribed by statute.

The **first** step in a civil action is to file a **petition** in the clerk's office of the common pleas court and cause a summons to issue thereon by a precipe from plaintiff's attorney stating names of parties, title of action, demanding summons. Thereupon the clerk issues summons in the form provided by statute. When the time for bringing the parties into court is not otherwise fixed by special statute the summons is returnable to the clerk's office on the second Monday after its date, but when issued to any other county than where action is brought it may be returnable at the option of the party having it issued on the third or fourth Monday after its date, and the day of the month on which it is returnable must be stated in the summons. Causes of action in the petition must be separately stated and numbered, as must also the defenses in the answer. When several causes of action or several defenses are stated as one cause a motion will lie to compel the pleader to separately state and number the same. The defendant may demur to the reply on the ground that it is insufficient in law on its face. When in an answer affirmative relief is demanded

against a co-defendant such co-defendant may demur or answer thereto as if it were a petition and to such answer of co-defendant a demurrer or reply may be filed. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply shall for the purposes of the action be taken as true, but allegations of value or of amount of damages shall not be considered as true by failure to controvert them. Every pleading must be signed by the party or his attorney and be **duly verified** by the party or his attorney under rules fixed by statute. Generous rules are provided by statute as to amendments of pleadings and all actions must be prosecuted by the real party in interest except in a few specified cases such as personal representatives, guardians, etc. The answer or demurrer to the petition shall be filed on or before the third Saturday, the reply or demurrer to the answer on or before the fifth Saturday and the demurrer to the reply on or before the seventh Saturday after the return day of the summons. The answer or demurrer of a defendant to an answer demanding affirmative relief shall be filed on or before the third Saturday, the reply or demurrer thereto on or before the fifth Saturday and the demurrer to the reply on or before the seventh Saturday after such answer is filed. The court or judge thereof in vacation may for good cause shown extend the time for filing any pleading upon such terms as are just. Issues of law must be tried by the court unless referred to a referee or master as provided by statute, and issues of fact arising in actions for the recovery of money or specific real or personal property shall be tried by jury unless such trial be waived or a reference be ordered. All other issues of fact shall be tried by the court subject to its power to order any issue of fact to be tried by a jury or referred. To get the facts before the court the **witnesses usually are all examined orally in open court** and their testimony taken down by a stenographer. When witnesses are non-residents of the county or unable to attend court their depositions are taken as provided by law.

**ILLINOIS.** In this State the distinction between common law actions and suits in chancery is preserved. No Code of Procedure has ever been adopted. Suit is commenced by filing a precipe directed to the clerk asking for summons. The summons is returnable to a term certain. The summons must be served by the sheriff at least ten days before the first day of the term or the cause stands continued. The declaration must be filed ten days prior to the first term and the proper practice is to attach a copy of the instrument sued on with an affidavit of the claim. In personal actions where there are several defendants action may be brought in the county where any one or more of the defendants reside, and process for defendants outside of said county may be served in county where they reside. Defendant may plead as many matters in several pleas as he deems necessary for his defense or he may plead the general same as set-off or give notice thereof under the general issue or under plea of issue and give notice in writing of special matters intended to be relied on for defense. Defendant having claims or demands against plaintiff may plead the payment, and if on trial it appears that plaintiff is indebted to defendant the jury may so find and the court give judgment for defendant with costs. After plea or notice of set-off is interposed the plaintiff shall not dismiss his action without the consent of the defendant. If plaintiff file with his declaration an affidavit showing the nature of his demand and amount due after allowing all just credits, deductions, and sets-off, he shall be entitled to judgment as in case of default unless defendant file with his plea an affidavit stating that he verily believes that he has good defense upon the merits to the whole or a portion of the plaintiff's demand, and if a portion specifying the amount. For want of appearance the court may give judgment by default. In actions upon default where damages are to be assessed the court may hear evidence and assess the damages without a jury. In all civil causes when the parties agree all matters of law and fact may be tried by the court. Papers read in evidence other than depositions may be carried from the bar of the court by the jury.

Suits in chancery shall be commenced in the county where one or more of

the defendants may reside, or if defendants are non-residents then in the county where they have property. Bill must be filed before process issues. The process as in actions at law is returnable to court term. Bill may be taken pro confesso on failure of defendant to plead or answer, but when taken for confessed the court before final decree, if deemed requisite, may require plaintiff to produce evidence to prove his bill or may examine the plaintiff on oath touching the facts.

I have thus as briefly in each instance as possible given some of the steps taken in our sister States herein named in commencing and maturing causes for judgment or decree with the view of comparing them with our own. My purpose has been to enable us to determine whether we are behind or abreast or in advance of other States in this part of remedial law. I may not have made myself interesting, but my purpose has been to make my paper useful, whether this desirable boon has been reached or not. After a comparison of the procedure of the States which I have noted above with that of the two Virginias my own conclusion is that the procedure in these two States is superior to that of the other States to which I have referred, except it be in the method of getting testimony before the courts in equity suits by depositions taken in vacation, which I will hereafter refer to. I may say further that I consider Virginia in advance of our own State in having provided for rule days the first and third Mondays in each month. This expedites the maturing of causes and gives time down to within two weeks of a court term to institute and mature a cause ready for trial or hearing at such term with ample opportunity, with our increased facilities of communication over the past by means of the railroad, telegraph, telephone, stenography and typewriting, to the defendant to make, speedy defense, or if through accident or other legal reason he has not had time, and so showing to the court presided over by a learned just judge his rights will be safeguarded by giving the requisite time for making defense. This matter of two rule days, namely the first and third Mondays in each month, each rules to continue three days, was under consideration at the last session of our Legislature, a bill having been introduced providing therefor, but the introduction thereof was late in the session and it failed to secure proper consideration. It is the the opinion of the reader of this paper stated with due diffidence that our Association should use its influence with our Legislature to secure this change in our statute, also to secure change in statute to provide when plaintiff proceeds by notice and motion to recover money due by contract the time for service of the notice shall be fifteen days before motion instead of thirty days as now required and such notice returned to the clerk's office ten days before motion instead of twenty days as now required.

A very important matter connected with Equity Procedure which I learn from the proceedings of the Association of one year ago will likely be considered at its present meeting is the question as to how the facts or testimony in Equity suits shall be brought before the Justices of the Peace and Notaries Public at the various cross-roads, school-houses, country stores, and other places in the desultory haphazard manner now pursued, or shall the testimony be taken viva voce in open court under the direction and control of the judge the same as now before a jury, stenographic report thereof be taken and afterwards typewritten and made part of the record? Of course as in actions at law depositions of witnesses outside of the court's jurisdiction or residing at a great distance and witnesses who by reason of infirmity are unable to attend would still have to be taken out of court. That there are great defects in our present method must be admitted by all and we certainly should be able in our deliberations to devise some better method. Whether the best method is to have all testimony taken in open court, subject to the exceptions above named, or some new plan not yet evolved is for the consideration of this Association. If the plan of quite a number of the other States of taking testimony in open court should be adopted it seems that an additional exception should be made, namely testimony used before a commissioner of court in the execution of a reference. Testimony for this purpose would have to be taken by and before the commissioner. The

present mode opens the door to many abuses, one of which is encumbering the record with so much irrelevant and incompetent evidence. Another is no doubt at times the introduction of perjured testimony, which if taken before the judge instead of a justice or notary out of court, the culprit would hesitate to give. I have now in mind a chancery suit in the circuit court of my own county heard and determined about fifteen years ago by Hon. John J. Davis as special judge, in which there were about one hundred and fifty witnesses and over five hundred pages of depositions, and that testimony taken at more than twenty places in Upshur and adjoining counties. That special judge was subjected to the punishment of reading and passing upon the relevancy and competency of that great mass of evidence, and my recollection is that not more than one-fourth of it was found relevant, competent, and material.

We have the example of a number of States taking testimony in suits in equity in open court, among which are Massachusetts, Pennsylvania, Ohio, Kentucky, California, Minnesota and Kansas. In testimony so taken in many cases the chancellor would be ready to decide the cause by hearing the witnesses without the necessity of referring to the typewritten report of their evidence.

As we learn in our books on evidence and as our common sense and experience teach us, one of the great objects in having witnesses in causes at law testify orally in open court in the presence of the jury is to give the jurors opportunity to observe the bearing, conduct, and demeanor of the witnesses in giving their testimony, that they may thereby be able to determine as to their honesty and credibility. In passing upon the testimony in chancery causes as now taken in the shape of depositions the judge has not had the opportunity allowed to the jury. The judge should have the same opportunity as the jury to determine as to the honesty and credibility of the witnesses as the testimony is now taken. The judge hears and determines controversies of vital importance and concern between man and man upon a mass of testimony given by witnesses he never saw and has had no means of determining the truthfulness or credibility of the testimony save what he may learn about the consistency or inconsistency thereof by reading the same.

Our appellate court is very reluctant to reverse the decision of a circuit judge on a question of fact, and one of the reasons given is that the circuit judge is presumed to know more about the witnesses than the judges of the appellate court, while as a matter of fact in most cases he knows no more about the witnesses than they do.

One of the objections to the taking of testimony in chancery causes before the court is that the circuit judges would not have time owing to the short periods allowed for their term to hear such evidence. If it be true as a matter of fact that the testimony in open court would occupy more time than the reading of the depositions by or before the judge, this should not be an objection if hearing the testimony orally enables the judge to get a clearer conception and comprehension of the cause, but the terms of court should be arranged so as to give requisite time. The primary object of courts of justice is that causes may be decided according to law and justice, and if the judge can reach this goal better and more safely by hearing the testimony in open court and scanning the conduct and demeanor of the witness then I submit this method should be adopted. Lengthening the terms would not necessarily increase the expense of the county or State. Let the first part of the term be given to jury trials and after such trials are completed let the jurors and witnesses in law cases be discharged and the residue of the term be taken up in the hearing and decision of chancery causes. The time so occupied as a chancery court would not cost the State or county anything, or at most only a mere trifle. As to costs to litigants in taking testimony before the court instead of taking same as now done I submit that a careful consideration of the matter will show that the costs will not be increased but will be diminished.

I have now referred to a few of the steps in the procedure in civil causes before judgment or decree and realize that I have already occupied too much time and therefore without further formality will close.

A. M. POUNDSTONE.

## APPENDIX III.

(Paper by Mason G. Ambler, Esq., of Parkersburg.)

### A Plea for the Preservation Of Our Forests, Streams and Fuels.

Mr. President and Gentlemen of the Association:

Less than a century and a half ago, according to historians, the territory which now forms our State was in the possession of red savages. The country was then covered with splendid forests which swept in unbroken ranks from the Eastern Alleghenies down to the waters of the Ohio. The rivers of that day are represented as of wonderful purity; and, having their banks held firmly in place by the forests, were much narrower and deeper than today. Natural gas was known only as an Evil Spirit breathing fire at Burning Springs; and the rainbow film of petroleum on the surface of a few streams was only the irridescent promise of the days to be.

The Indians, although for centuries the sole landlords of this region, gave posterity no cause for complaint, except that they disturbed the calculations of certain surveyors, who betrayed a greater fondness for imaginary lines and the First Law of Nature than for actual "calls" among the Children of the Forest. (Of the results of their discretion, however, let the laity and the Torrens land system champions complain.)

When the day of the Indian was over the "New Dominion" had been born, Eastern capitalists, reaching out with their railroads, were anxious only to find the shortest cut across our mountains to the west. Neither our great natural advantages nor our land laws could tempt or hold them, and West Virginia was long known as a "neglected oasis." This was before the days of the Bar Association and long prior to the attractions of Tax Reform. With the real discovery of coal, oil, and gas, however, came a great awakening. Capital began to pour into our State, and for twenty years, West Virginia has been the field of great development. But this so-called development has been also accompanied by a species of commercial devastation, which if permitted to continue will become irreparable. No section was probably ever more lavishly endowed by nature than our own mountain commonwealth, and probably no section was ever more rapidly depleted of the riches of the ages or with less consideration for the welfare of posterity.

Even the casual traveler through our State cannot now misread the "signs of the times." They are everywhere blazed on the face of nature. On every scarred and deforested mountainside, in flood swept valleys and polluted streams; in the weird and wasteful illumination throughout our great natural gas belt. These significant omens are not peculiar or confined to our own State. Some or all of them may be found in every State of the Union in a more or less pronounced form. There are but few States that have not some form of the forestry problem to solve; all are interested in the preservation of waters, especially from pollution, and the widening of the natural gas territory until it now includes Texas, California, Indian Territory and Kansas in addition to the old fields of the Eastern and Middle States, renders the subject of the prevention of waste and transportation of that fuel one of increasing importance, not only to the producing States, but to the many contiguous States affected by these problems. These questions, therefore, are of national importance; and while the remedies here advocated are of special local importance in their application, yet they have been suggested by a careful examination of all the remedial legislation of the

various States and the nation in their efforts to preserve the forests, waters and fuels of our country. The effort here made has been to discriminate among the many measures and to select only their best elements.

**The Preservation Of Forests.**

The rapid exhaustion of our once great forests is a genuine cause for anxiety throughout the State. This is only one phase of a subject now of national importance. President Roosevelt some time since called the attention of Congress to the forestry problem of the nation and aptly put it—"as one of the most vital of the internal problems of the United States."

In our own State some years ago, one of our Governors was so impressed with the importance of this subject that he issued a proclamation fixing October 11, 1899, as Arbor Day, and stated that while there was no statutory provision on the subject, yet conditions warranted such unusual executive action, for the time had come when we must repair and preserve our forests or pay the penalty for neglect.

Since that time every gubernatorial message has emphasized the need of such legislation, and one of the ablest bodies ever selected in this State—The West Virginia Tax Commission, felt the necessity of going beyond its regular duties in regard to this one subject alone, and reported as follows:

"Many suggestions have been made to us looking to needed legislation upon subjects foreign to the legitimate work of the Commission to most of which we have felt that we should not even call attention. One of such suggestions, however, that of the duty of the State to take some steps to prevent the wholesale and, in some cases, useless destruction of its forests, especially along and at the heads of water courses, is of such grave and general importance that we feel constrained at least to mention it. The general government, as well as several of the States are giving attention to the matter. In the State are vast areas that are unfitted for agricultural or grazing purposes when the timber has been removed or destroyed. It is worth the while of the State to consider how far the timber on such areas can be preserved. Where it has already been removed from such ground, it may be pertinent to consider how far the land can be retimbered and what the State can do to encourage and assist in its retimbering. That much can be done in this line seems to be demonstrated by experience in other places, where lands stripped of their forests by cutting or by fire, have been reforested. Whether in any way it can encourage or assist the owners in so doing is worthy of consideration. Something may be gained from more stringent laws against firing forests, or setting out fire therein which results in their destruction. It has also been suggested that the State retain, instead of selling, all timber lands, now forfeited or hereafter to become forfeited, and procure others as far as it can do so; and finally, that under different constitutional provisions from any we now have, certain of such lands might be exempted from taxation where the owner will undertake to retimber them. Certainly much more relief and assistance could be given than at present. The Commission feels that it should not go further than to call attention to this matter, and its very great importance must be the excuse for doing even that much."

This report was presented over two years ago, but thus far nothing has been done.

The causes of devastation are fast multiplying. The spread of railroads has carried destruction to the very heart of our great forests, and the song of the saw-mill and the ring of the ax are heard in every interior valley. in a commercial requiem over the monarchs of the century.

Under present methods frequently all the timber is taken from a tract without regard to "color, age or previous condition,"—the sapplings as well as trees of mature growth falling alike prey to the lumberman. In all cases, however, the best species are taken, and the inferior kinds that remain "seed up" the ground and reproduce poor varieties. There is also great waste from cutting stumps higher than necessary, and in leaving merchantable timber in the woods

in the form of tops and logs which not only are wasted but furnish fuel for forest fires. This is especially true of chestnut-oaks, which stripped of their bark for tanneries are left to rot where they fell.

The greatest single resource of the Appalachian Region is its timber. It contains the largest and most valuable hard-wood forests in the United States. Instead of present methods of lumbering, the scientific methods of the Forest Service should be substituted, if this unique forest is to be preserved, properly lumbered and perpetuated. There should be more home industries, wood manufacturies located permanently in the State like those in Michigan, which own great timber ranges and treat their trees like crops of slower growth. Their forest experts select a site for a factory in a region which can supply timber for ages to come. The surrounding woods are divided into ranges and as fast as one is thinned out new trees are planted and thus the supply of raw material is constantly assured. This has largely been brought about by State assistance and education.

The enormous demand for lumber is, of course, the basis and the natural cause of forest destruction. A single illustration is found in the demand for railroad cross-ties. There are 620,000,000 cross-ties in use in the United States. 100,000,000 are required each year as renewals on railroads, and to supply this item alone requires the product of over 200,000 acres of perfectly wooded land. Of course, many times as much is actually used and scarred.

The Southern supply of yellow pine is fast becoming exhausted; the Pennsylvania railroad system has been drawing upon West Virginia and North Carolina for white oak in its stead; yet so fast is the supply failing that this system has been forced into the forestry business, and has planted 100,000,000 locust trees recently on railroad land. But as this single system requires 39,000,000 trees per annum to furnish ties, it can be seen that the problem even as to ties is unsolved.

In addition to this one source of demand, there are the tremendous requirements of the building trades, pulp mills, etc., beyond number.

These natural causes of destruction are also intensified by artificial measures, chief among which is the tariff on timber. This is a clear case where protection means destruction. It is true that the price of timber has risen over fifty per cent in twenty years, but this only increases the danger. The exclusion of Canadian and Alaskan lumber puts a premium upon the destruction of our American forests. Alaska—a land without laws—is virtually starved by a tariff on lumber, and her immense virgin forests remain unutilized with the single exception that pulp wood for paper is admitted free of duty—a remarkable tribute to the powers of the press.

Nearly every other civilized nation has been compelled to care for its forests. Germany's forests are well known to us from childhood. Their beauty breathes through all German life and literature. Switzerland has protected her forests since 1865; France since 1870; even Russia since 1888 has had an Imperial Forest Policy; while Japan has a reserve of 29,000,000 acres under a finely organized Forest System.

In our own country many of our sister States, alarmed by the inroads upon their forests, have purchased large reserves. Massachusetts has great State Forests, which are practically parks. New York has three parks, the Adirondack, the Catskill and the St. Lawrence, containing 1,325,000 acres. Pennsylvania has 700,000 acres of Forest Reserve lands, some of it used for park purposes. Thus more than twenty-five States and territories have taken up this subject and are making progress, while the National Government has been particularly active in the West where, in recent years, it has set aside over 40,000,000 acres of forest lands.

All of these conditions only insure disaster to West Virginia forests. Increased commercial needs, prohibitive tariffs and the withdrawal of timber supplies by the States and the nation all concentrate the demand upon West Virginia, and other "open" States, which remain unprotected by reserves

or restrictions. We accordingly suffer from an influx of timber speculators, who, driven from other States and having no real interest in our State, are anxious only to get what they can get out. At the same time, the demands upon the more legitimate lumber business are rendered enormous by the elimination of outside forest supplies.

The need of action can not be over estimated. President Roosevelt in his October address at Raleigh, N. C., in the heart of the Appalachian Forests, said:—

"It is the upper altitudes of the forested mountains that are most valuable to the nation, as a whole, especially, because of their effect upon the water supply. Neither State nor nation can afford to turn these mountains over to the unrestrained greed of those who would exploit them at the expense of the future."

"We cannot afford to wait longer in assuming control of these forests in the interest of the public, for if we do wait, the vested interests of private parties in them may become so strongly entrenched that it may be a most serious as well as most expensive task to oust them. If the Eastern States are wise, then from the Bay of Fundy to the Gulf, we will see within the next few years a policy set on foot similar to that so fortunately carried out in the high Sierras of the West by the National Government. All the high Appalachians should be preserved either by the States or by the nation."

The necessity for action being clear, what means should be employed to secure results? It is suggested:—

**First:** That West Virginia should officially approve the National plan for "The Appalachian Forest Reserve." North Carolina, South Carolina and Tennessee have by proper resolutions endorsed this proposition, and conferred upon Congress the power to legislate and enforce laws for such Forest Reserve in each of their respective States. (North Carolina Law 1901, Chapter 17. South Carolina Acts of 1901, Page 609. Tennessee Acts of 1901, Chapter 47.) The legislative endorsements of Virginia and West Virginia alone are missing from the States in this proposed Reserve.

**Second:** We should, if possible, have our own State Forest Reserve with a special view to protecting our water sheds. The entire burden should not rest upon the National Government. What other States have done, West Virginia can do, and wherever States have established Reserves they have become great educational factors in instructing the people in scientific forestry.

The forestry problem in West Virginia should be studied by experts preliminary to the preparation of a forest law, to meet the needs of the State. It has been suggested by one or two of our Governors that this work be conducted by the Geological Survey, which has rendered such splendid service in their investigations of minerals—coal, oil, gas, clays, etc. But a better plan would seem to be to appoint a commission of State experts on woods and forests to cooperate with the United States Bureau of Forestry. This has been done with excellent results in New York, New Hampshire, California and Florida. The Florida Act passed last winter is a good model. The United States Forest Service contributes to such work as much from its own appropriations as the State will contribute from its funds, and this method is endorsed by the best authorities on Forestry.

When the preliminary work has been finished, a proper law can be drafted probably along the lines of the New York and Pennsylvania statutes, which are very full. Educational provisions should also be considered as in Massachusetts where at the State nurseries soils and trees are tested, instruction is given in planting, and seedlings are furnished by the State on condition that planters operate under State forestry experts. (Massachusetts Code 1904, Chapter 409.) Thousands of acres of otherwise useless land are thus being redeemed in Massachusetts. In West Virginia a very large percentage of our lands is of such a nature and condition as to be valuable for forest purposes only, and the Massachusetts Act should be considered in connection with a constructive forest policy in our State. Other features, such as the establishment of Arbor Day and

of rebates and exemptions for tree planting as in Michigan and Maine, protection against fire, disease and trespass all deserve the earnest consideration of our Legislature, even should a constitutional amendment be necessary for full relief. The subject of forestry in West Virginia should not be longer neglected.

**Preservation Of Waters..**

Closely allied to the question of preserving our Forests is that of preserving our Streams. The danger of disturbing the balance of nature is probably no where better illustrated.

The denudation of our hills means the inundation of our valleys. The maxim of the lumberman is literally, "After us the Deluge."

It is a well known fact that the Appalachian region receives an unusually heavy rain fall and in a mountainous section like West Virginia, when the forests are destroyed with their accumulations of leaves and undergrowth, rain falls upon a slate roof instead of upon sponge and the valleys suffer accordingly.

The converse is equally true. In time of drought streams go dry because the springs in a deforested section have no supplies stored by slow absorption.

The great possibilities in the application of the water power of our State have barely begun to be realized, but as water power depends upon constancy of flow and this in turn depends upon the maintenance of the forest cover on the mountains the necessity for the preservation of that cover is evident.

This phase of the water question—the proper regulation of supply—would therefore be largely remedied by the establishment of a proper forestry system already discussed.

**Pollution.**

There is, however, another important question in regard to our streams and that is how to prevent their pollution. Scarcely a stream of any importance in our State has not become polluted within the past ten years. This is a familiar fact to most of us especially to devotees of the rod.

This condition is chiefly due to manufacturing plants, tanneries, pulp mills, mines, etc., and is the result of careless methods.

The last Legislature in response to Gov. White's message made a liberal appropriation to prosecute those who have turned New River into a cesspool, yet New River is only one of many important streams whose natural purity and beauty it is almost a sacrilege to defile.

When we see how the arid West prizes pure water and makes it the subject of chief legislative and judicial concern, it would seem that in our present extravagance, we, like Dives, might appreciate virtues too late.

Even Kentucky pays more attention to waters than we do, and foreign countries excel Kentucky. Imagine Switzerland permitting lovely Lucerne to be turned into a tan vat. Yet we have streams historic and once the life of the landscape, that have now become bilious blots on the face of nature.

The riparian owner has, of course, the right to enjoin pollution at common law. (Farnham, page 1689.)

But in this State riparian owners are for the most part too poor and too scattered to take action. It is a matter of sufficient importance for State consideration. In fact the State is almost the only power that can deal effectively with present conditions, since the streams in which the pollution is most marked flow through many counties, and many causes contribute to the total result. The State has the right at common law to proceed by indictment or by injunction against the pollution of streams as a public nuisance. (Farnham, pages 1540-41.)

But probably the surest means of relief can be found in the State's power to preserve the fish. Under our statutes until quite recently the poor wretch who took a stick of dynamite and killed a few fish committed a felony, while

the person or corporation that polluted the waters of a stream for fifty miles and rendered them totally unfit for fishing or any other purpose, escaped all punishment. This is true of many States. The Legislature of 1903, changed the law and made dynamiting a misdemeanor, and also provided that it shall be unlawful to put any matter deleterious to the propagation of fish in any stream in this State, and the violation of this section is made a misdemeanor punishable by a fine of from twenty-five to one hundred dollars for each offense.

This is a start in the right direction. It is well settled that so far as the waters of the State are common passage ways for fish, they are of a public character and subject to State control. (State vs. Roberts, 59 N. H., 256; 47 American State Reports, 199; Vinton vs. Welsh, 9 Pick. Mass. 89.)

The State has even a greater right to control the fish where it has stocked the waters with game fish at great expense. The law can even be applied to private ponds. (Com. vs. Bender, 7 Pa. Co. 624; Peter's vs. State, 96 Tenn. 682—33 L. R. A. 114.)

It is also well settled that this power to preserve fish, entitles the Legislature to forbid the casting into streams or waterways of substances which will destroy or drive them from the stream. (Cartwright vs. Canadiagua Co., 32 Hun. 403; State vs. Kronert, 13 Washington 644,—43 Pacific 886; State vs. American Forcite Co., 50 N. J. L. 75.)

In West Virginia the protection of fish is a matter of very substantial importance. If our streams were put into proper condition, we would soon become one of the great recreation grounds of the nation—as much as New Hampshire and Maine. So valuable has our situation been considered by the Federal Government in this respect that it has located a branch of the Fisheries Bureau at White Sulphur Springs, at an expense of nearly $50,000, and in the last two years alone, as official reports show, it has, with no expense to us, placed over two million black bass and trout in our streams. The Fisheries Bureau depends upon State laws to protect these fish particularly from the pollution of streams. New York pays over $75,000 a year to keep her streams stocked, and it would seem that we might at least keep ours clean. Black bass and trout belong to the aristocracy of fishes and are the best barometers of clean, pure water. New York and Pennsylvania preserve the purity of their streams through this protection of fisheries, and in both States the supervision of fish and game is vested in one board known as the Forest, Fish and Game Commission, under the Forestry Act. This is a happy concentration of powers over the natural allies—woods, waters and wild life.

A very instructive compilation of laws in regard to the pollution of inland waters will be found in "Water Supply and Irrigation Bulletin No. 103," to be had at the Geological Survey, Washington, D. C. Also a paper by George Hungerford on "The Pollution of the Water Supply of Cumberland." (New York Engineering News, Volume 39, No. 6, Page 90, published February 10, 1898.)

### Natural Gas.

Turning now from considering the preservation of forests and streams, we come to that of fuels. The two great fuels of our State are, of course, coal and natural gas. Of the former nothing need be said in this article,—nature has so bountifully stored our hills with the crystallized sunshine of a primeval age as to render it well-nigh inexhaustible, and the questions arising in this particular are not so much how to protect our coal as how to protect our State from the evils incident to coal,—how to protect our people from the dangers of mining operations, how to prevent the pollution of our ballot and citizenship by ignorant classes; how to maintain our educational system, to secure a fair system of taxation and finance and guarantee a "square deal" in railroad rates and car distribution. These are not questions, however, within the scope of this article, though of deep interest and of national importance.

Coal is a slow asset and is protected by the very difficulties inherent in its extraction, whereas, natural gas may be said to mine itself. In this lies its chief danger of exhaustion. To preserve natural gas a number of methods have been suggested. The most important, however, are three: The prevention of waste, of pumping and of transportation.

**Prevention Of Waste.**

First: As to the Prevention of Waste. There is probably no difference of opinion that the waste of this valuable commodity should be prohibited. The facts in this connection are not perhaps generally realized. We have had great object lessons in Indiana where the gas belt is now practically dead, and in Pennsylvania and Ohio where it is fast dying.

In Indiana for many years, race courses were run by night as a novelty, and the amount of gas blown off by flambeau burners throughout the State was enormous. The reaction has since come with strict legislation, but "the stable has been locked after the horse was out"—for many a midnight booking.

In our own State, it is well known that all the country throughout the gas region is better illuminated at night than any metropolis before the advent of arc lights. Every farm house has its flambeau, and the pig sty and cow barn have a private illumination of their own that would keep an unsophisticated rooster crowing from dewey eve to dawn. The gas well is allowed to flow as freely as the family spring, and with as little belief in its exhaustion. This is only one universal source of waste. In addition we have wells that are allowed to blow off without restriction. Wells in which gas and oil are intermittently produced in large quantities and in which the gas all goes to waste.

We know of these things in a general way, but it has remained for the Geological Survey to bring the subject home and crystalize the facts into figures. In their report for 1904 (Vol. 1 a, page 29) it says:—

"Along with this wonderful recent growth of the petroleum industry in West Virginia, there has been a corresponding increase in the production of natural gas so that this State now stands first of all the States in the production of this matchless fuel, and with proper care in husbanding this source of power and the prevention of needless waste, it should last for another generation at least.

The quantity of natural gas by estimate coming to the surface in West Virginia, is about one billion cubic feet or the equivalent in heating power of one million bushels of coal, or forty thousand tons a day, or 14,600,000 tons annually, which is more than half of this State's annual production of coal. At only ten cents per thousand feet, the daily production is worth $100,000—one-fourth of which is wasted without accomplishing any useful purpose whatever."

Further in this report tables are given showing pressures, various forms of waste, and at page 45 the commission says:—

"It is needless to state that the general adoption of gas engines for power and a mantle burner for light in West Virginia would eventuate in saving more than one hundred million cubic feet of natural gas a day, while at the same time securing ever better results in the way of power and light.

"The State has probably lost more than one hundred and fifty million dollars worth of this fuel within the last decade alone through needless escape into the air without any pretense of utilization, while probably half as much more in value, or seventy-five million dollars' worth has been lost by inexcusably wasteful methods in burning the gas for the production of light, heat and power.

"A priceless heritage has thus been ruthlessly destroyed in spite of all the warnings that the State Geological Survey has given direct to the Legislature in official reports.

"It is not too late to save a remnant of this natural wealth for future use provided the Legislature will act promptly at its next opportunity. The present delay has been inexcusable. To postpone the matter longer would be nothing short of criminal."

Yet with these facts before it, the Legislature in 1903 and again in 1905, deliberately refused to grant relief,—preferring to wander in the sweet-scented gardens of Senatorial romance, and incidentally give the Liquor League and the lobbyists an awful scare.

The figures of Dr. White can hardly be realized. Over $200,000,000 wasted in ten years, or an average of over $20,000,000 a year. A sum that would dig the Panama Canal; that annually is twice greater than the entire Alaskan gold production. If this gas were suddenly condensed into gold by some magical atmospheric current, the entire State could be encrusted in a shining shield. The expression for wanton waste has heretofore been "money to burn," but we forego the trouble of burning it.

By what code, moral or legal, has one brief generation the right thus to waste the treasured product of a thousand ages? How can we indict a Rockefeller for wrongful accumulation when we, in ten years, have blown into thin air a fortune almost equal to the colossal savings of his life time; or how can we blame the mother State for requesting such a prodigal daughter to pay a portion of a debt—even were the obligation wholly maternal?

There is no question as to the remedy. Two Legislatures have had the case fully presented both by Geological Reports and by strong executive appeals, and both have failed to discharge this duty. The law on the subject is settled. The State has no actual ownership in oil or natural gas, but it can exercise the police power to prevent waste. The greatest confusion has arisen in reaching this distinction.

It has been speciously argued that as the State for the protection of fish and game can enact laws prohibiting hunting and fishing, and the shipment of game beyond the State limits, that therefore the same right exists in the State to prohibit the waste and shipment of natural gas. This theory is based on the fact that fish and game are of the genus ferae naturae (by nature wild), and until reduced to possession and control are the common property of the public and subject to State regulations. So natural gas, it is argued, is a thing ferae naturae over which the State may, as in the case of game and to the same extent, exercise authority. But the identity between game and gas while apparent in many aspects, fails at one fatal point. Game may be sought and taken by any or all of the public wherever found, whereas, the landlord is sole owner of the oil and gas under his surface area, and the public has no right to take the oil or gas from under his property. He owns the earth to which he has title in fee from center to circumference.

It has been held in Williamson vs. Jones, 39 W. Va., 231-25 L. R. A. 222, that oil and gas in place are a part of the realty itself, and so strongly has the notion of absolute ownership of the oil and gas in the land by the owner of it beneath which it is found,, become imbedded in our law, that without the aid of a statute the owner of such land cannot be prevented from wasting it by the owner of the adjoining premises. (Jones vs. Forest Oil Co., 194 Penn. 379-48 L. R. R. 748.)

Yet the owner of the soil has not an absolute ownership in the oil and gas beneath the surface. He has only a **qualified ownership**—the right to reduce to possession, and to exclude all others from exercising that right on his premises; and title in him does not vest until he has reduced the oil or gas to actual possession. Until this has happened, the gas or oil by natural forces, may escape from his land, be reduced to possession by another and become his property.

When the land owner taps with his drill the great reservoir that underlies his own land, and that of his neighbor as well, he cannot fail, if he wastes his own gas, to diminish the common supply. Courts now recognize the fact that

gas is stored in reservoirs extending through vast subterranean areas underlying the lands of many owners, and that the waste by one owner is an injury to all others who draw from that common fund.

It is possible to conceive of such gross and wanton waste of natural gas as if entirely unrestrained would totally exhaust and destroy the entire supply in a single year or month. This is the annihilation of millions of property dependent upon its continued existence. If any conceivable circumstances would justify the exercise of the police power, it would seem to be in just such a case, and the subject is for the Legislature to determine. Where a **statute** forbids the waste of gas, it is held that the State in its sovereign capacity **can** enjoin the waste, and the statute is upheld on the theory first mentioned, that the land owner has no title to the gas, except the right to drill on his own land, to take it into his possession, and so long as he has no title, the Legislature has the right to prescribe **the mode of taking.** This point is now well settled in the case of the Indiana Oil Company vs. Ohio Company, 177 U. S., 190, in an opinion of great force and lucidity, sustaining the Indiana statute. The court says among other things—"The legislative power, from the peculiar nature of the right and objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like and by preventing waste. This necessarily implied legislative authority is borne out as before shown by the analogy in some respects suggested by things ferae naturae, which it is unquestioned the Legislature has the authority to forbid all from taking, in order to protect them from undue destruction, so that the right of the common owners, the public, to reduce to possession may be ultimately efficaciously enjoyed. Viewed, then, as a statute to protect or to prevent the **waste** of the **common property** of the surface owners, the law of the State of Indiana which is here attacked because it is asserted that it divested private property without due compensation, in substance, is a statute **protecting** private property and preventing it from being taken by one of the common owners, without regard to the enjoyment of the others."

This statute is only an extension of the old maxim "sic utere tuo ut alienum non laedas," so use your own (property) as not to injure another. The negative Golden Rule of the common law.

At the last session of the Legislature, an exact copy of this fully tested Indiana Law was introduced, a measure not unknown to fame as Senate Bill No. 40, (Senate Journal, page 129.)

This statute was enacted in Indiana as an emergency measure, but as before noted, was given scant consideration, by our Legislature. Section 4 of the Act prohibits waste by the use of flambeau burners; Section 12 prohibits waste of gas by oil operations; and Section 13, provides that abandoned wells shall be plugged. These sections of the measure are all sound, and should have been embodied and passed in a separate bill. ((See Townsend vs. State, 147 Indiana, 642,—37 L. R. A. 294; Manufacturers Co. vs. Indiana, 155 Indiana 461,—50 L. R. A. 763; Given vs. State, 66 Ind. N. E. Reports 750, 782.)

**Prevention Of Pumping.**

Second: The Provision from the Indiana Act prohibiting the pumping of natural gas wells was also incorporated in Senate Bill No. 40. This would seem to be an undesirable provision, although it has been sustained in Indiana in the case of Manufacturing Co. vs. Indiana Co., 155 Ind. 461,—50 L. F. A. 768. The opinion is, however, far from convincing, and it is hard to see how such a provision could be valid, where gas is pumped to be **used** and is not wasted. Otherwise, the pumping of oil might as well be held illegal,—contrary to all precedents. It has, however, been pointed out by Mr. Thornton, chief authority on oil and gas, that this question is not of such practical moment as a gas well is of no value when it becomes necessary to pump it.

**Prevention Of Transportation.**

Third: The third measure suggested is to prevent the transportation of natural gas. This object has been attained in Indiana to a certain degree by statute, under a merely colorable exercise of the police power. The same provision was contained in Senate Bill No. 40, and it was probably this feature that killed the measure in our Legislature.

The right of a State to limit or to prohibit the transportation of natural gas beyond her borders under a pretended exercise of the police power, and thus evade the constitutional guaranties of interstate commerce, may well be open to serious question. Probably no provision of the Federal Constitution has proved more salutary, necessary or led to a more profound growth of the national spirit than that insuring free trade among the States; the prohibition of all discriminations by the States against one another in regard to articles of commerce. Sections, instead of becoming selfsufficient, have become mutually dependent. The golden shuttle of commerce vibrating among the States has woven the cloth of harmony and good will throughout the Union.

The twin unities of steam and steel together with the wonders of electricity have so annihilated space that today the boundaries of the Union are not as far remote in time as were the borders of our own small State on her natall day. West Virginia has become an assimilated part of a great and closely knit nation. We enjoy the products of every section, brought to us by the great currents of national exchange. The nation has become a great department store with highly specialized centers. From the west come our cereals and cattle; from the north and east, manufactures and finished products; even cities gain fame for specialties. Chicago packs pork for the entire country including the Philippines. Milwaukee vies with Kentucky for liquid fame, and Battle Creek is familiar to every dyspeptic that believes in bran for breakfast. New York becomes paralyzed and frozen from a strike in the anthracite mines in Pennsylvania. West Virginia with Pennsylvania is best known as one of the great feeders of the fires of commerce,—a great fuel State of the Union. Natural gas is as much a fuel and an article of commerce as coal, and we in West Virginia have in the past received immense quantities of natural gas from Ohio and Pennsylvania, and we still use large quantities from these States, in several of our cities.

It is true that other States have tried to prevent the transportation of their gas. First on the fallacy that gas was not an article of commerce, and then on the theory that the State was the owner because gas is a thing ferae naturae. Both doctrines have been expressly declared invalid. Gas is an article of commerce, and there is no actual ownership in the State. We may expect in these days of State and municipal ownership and of socialistic enterprises fostered by shrewd politicians, to hear the proposition suggested of a great State gas reserve,—a scheme beyond even the dreams of Addicks.

But the Indiana law makers have not been so far in the van of progress. Defeated on direct methods of prohibiting transportation, they next sought an ingenious pretext for exercising the police power of the State, ostensibly to regulate the pressure in gas lines for the safety of the public, but in fact, to place the limit of pressure below the point necessary to transmit gas over the State line. This part of the statute reads:

"Natural gas shall not be transported through pipes at a pressure exceeding three hundred pounds to the square inch, **or otherwise, than by the natural pressure of the gas flowing from the wells.**"

The object of this law is to prevent any pressure being used for the transportation of gas in pipe lines except by the natural force at the wells which is limited to three hundred pounds in pipes tested to four hundred pounds. This would eliminate artificial means of every kind for inducing or maintaining pressure to the three hundred pound limit. This discrimination of itself shows the insincere character of the measure. If three hundred pounds pressure is

not dangerous, (and the statute admits that it is not) why should not artificial means be allowed to maintain such pressure? Artificial means are dangerous only because they would defeat this subterfuge,—because the problem would then be reduced merely to establishing pumping stations at shorter intervals until the gas had been transported into some other State.

The Supreme Court of Indiana in a labored opinion upholding the limitation of pressure has had to concede this other important point—that pressure may be maintained to the limit of three hundred pounds by artificial as well as by natural means. Thus the court has actually changed the statute by judicial legislation. It may well be doubted if the statute as enacted is constitutional; whether the court had the power to change its express terms, and if by so doing it has not destroyed the chief object of this legislation. (Manufacturing Co. vs. Indiana, 12 L. R. A. 230.)

If an arbitrary limit of three hundred pounds can be fixed why not one hundred pounds or less, according to the limit that may prove most detrimental to shipment in each particular State?

A pretext to evade constitutional guaranties would not be likely to stand if brought fully before the Federal Courts. Justice Harlan has said in the case of Mugler vs. Kansas, 138 U. S. 623—"If a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no relation to those objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."

In the Missouri Mining cases recently decided by the Supreme Court of the United States, the court says:—

"Where the ostensible object of an enactment is to serve the public comfort, welfare, or safety, it must appear to be adopted to that end; it cannot invade the rights of personal property under the guise of a mere police regulation when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is really an appropriate measure for the promotion of the comfort, safety and welfare of society."

The danger of this kind of legislation has also been pointed out in re Jacobs 98 N. Y. 99—

"In the assumed exercise of the police power in the interest of the health, welfare or safety of the public every right of a citizen might be invaded and every constitutional barrier swept away."

Still more directly in point is the case of Leisy vs. Hardin, 135 U. S. page 108, where the court says in regard to an attempted restraint by a state of interstate commerce, "while by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons and the protection of property so situated, yet the subject matter which has been confided exclusively to Congress by the constitution is not within the jurisdiction of the police power of the State unless placed there by Congressional action. The power to regulate commerce among the States is a unit. Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress, and can not be encroached upon by the States."

In West Virginia, persons and corporations have acquired vested interests in gas fields, have spent enormous sums in the construction of pipe lines, under State sanction and under State charters, purchased on the terms prescribed by the Dawson Revenue Act. Large sums have been paid for gas territory, franchises, etc., and the question naturally suggests itself, Is it right to depreciate or destroy the value of these investments made in good faith and with the expectation that no discrimination would be made?

Further the land owner and operator have rights that should be considered and respected. They should have the right to sell to any pipe line com-

pany, local or inter-State. A pipe line company is a common-carrier and there is no reason why the owner of the gas should be prevented from the sale or shipment of his product to best advantage. His rentals of hundreds of dollars a year per well ought not to be cut off by legislation eliminating foreign and many home markets from the field. He should have every advantage to sell his property at prices regulated by natural laws, unless there be serious objection.

No one believes that the real motive for this law is anxiety for the safety of the people. What great danger has been experienced in the transportation of gas in inter-state lines? For the most part, they, like oil lines, run through wild and unsettled territory where rights of way are cheapest. These pipe lines cost fabulous sums and self-interest alone would dictate careful management to prevent loss of contents and to avoid damage suits for negligence.

No restriction is sought to be placed upon oil lines although the danger may even be greater from escaping oil than gas since gas is generally dissipated in the air. Why not also prohibit the pumping of oil wells and the application of any pressure for the transportation of oil in pipe lines except the natural pressure of the well? The fact is that we are desirous of shipping as much oil and coal as possible, though the influx of pauper labor incident to these industries and the consequent disturbances arising are a more serious menace to the safety of the people than all the gas lines penetrating our densely populated hills and forests.

But where neither legal nor moral questions are involved, would it be expedient to enact such legislation? What of the effect upon capital? Many sincerely believe that the mere taxation of coal, oil and gas will set the State back indefinitely, and keep out capital that would otherwise flow here. Instead of artificial and unjust discrimination, it would seem better to offer every inducement to foreign capital to locate in our State, to establish home industries near our great fuel supplies, thereby creating home markets for these fuels. Better a patriotic endeavor to proclaim the advantages of our State than to secure the enactment of provincial laws. The prohibition should be against "Dog in the manger" policies.

Finally one other and that a serious consideration arises out of this subject.—It is a recognized fact that the cities along our western border, by reason of their favored location upon one of our great inland highways of commerce, have become substantial prosperous centers of industry,—many of these cities from Wheeling to Huntington must rely upon distant inland fields for gas. The pressure of three hundred pounds, when obtainable at a well, will only carry gas sixty miles from the field. Several of these border cities depend on a gas supply nearly one hundred miles away; hence this statute prohibiting artificial pressure would cut off their supply.

Nearer fields might be found, but this is problematical, and the competition of interior counties would be eliminated. Besides if border towns could be supplied, the law would fail in its effect; for if gas could be brought to the State line, what could prevent its transportation beyond that limit, and once beyond, what restriction could be placed on artificial pressure?

Clearly too, the owners of gas fields near the State line would enjoy a decided advantage over interior owners by having the choice of home and foreign markets free from competition.

The effect of such a law would be to build a Chinese wall around the great gas belt of the interior, giving to towns located on top of the gas tank, the right to tap the supply ad libitum, securing to a few a monoply of this fuel and excluding the rest of the State; bottling up the land owner and operator in the interior, abridging their rights by curtailing use and diminishing value, and allowing fields near the State line the advantage of all markets minus competition.

It is therefore suggested that from the standpoint of legality, morality and expediency, our efforts to preserve natural gas should be limited to strict

legislation against waste, and that measures of doubtful constitutionality ought not to be encouraged.

In conclusion it is earnestly submitted that the questions here touched upon are of the most urgent importance. Forestry legislation is more important than river and harbor appropriations, since the stability if not the existence of our streams depends upon the perpetuation of our forests. The preservation of natural gas is of greater importance than questions of land laws and taxation, since these, like the poor, we have always with us, while the "true and actual value" of gas is fast vanishing and the assessor cannot get it "as he goes."

All authorities, State and national, agree that an emergency exists; that something should be done and done at once. The only opposition comes from a mercenary self-interest which displays the destructive instincts of the barbarian rather than the altruistic spirit of Twentieth Century civilization. The prime difference between civilized and uncivilized people is that among civilized people each generation works not only for its own wellbeing, but for the wellbeing of the future.

There are many signs at hand that utilitarian standards have not overcome the higher ethical and moral ideals of the nation. California has recently wrested the wonders of the Yosemite and the great Mariposa Grove from the hands of vandals and presented them to the National Government. New York the center of modern progress, has succeeded in preserving the integrity of the Adirondacks and the beauty of the Pallisades, and today is engaged in a struggle with the forces that would hush the thunder of Niagara and transform its splendor into a network of poles and wires, for private gain. Already this battle seems half won because of the awakened conscience and intelligence of the people. In our own State—with a spirit born of our mountains, with a deep reverence for nature as a manifestation of Deity—what higher duty do we owe our beautiful little commonwealth than to see that the Divine laws of nature are so aided and protected by the best laws of man, that we may hand to posterity a heritage undiminished in utility, force or beauty.

MASON G. AMBLER.

## APPENDIX IV.

(Address by Hon. Wendell P. Stafford, of the Supreme Court of the District of Columbia.)

### "The Lawyer."

(N. B. It is a matter of great regret that the full text of Judge Stafford's address could not be obtained for publication.)

Judge Stafford said in part:—

There are lawyers by nature just as there are poets by nature. They are endowed with two great gifts; one is intellectual, the other moral. One is the power to perceive the true relations of things, and the other is the disposition to see justice done. This ability to see the true relations in which things stand to each other—what is it but common sense magnified? And who will not admit that common sense is always a gift of nature? If you know any college that can confer an honest degree in common sense let me know—I want to send my boy there. It can't be done. If he was born with it the school will give it breadth and power. If he was born without it the school will only make the deficiency conspicuous. The Spaniards have a proverb, "A fool is never a great fool until he knows Latin." We have all seen lawyers who would have been stronger if they had relied more on their reason and less on their reading. Even on the bench I have known men who would have been better judges if they had been poorer lawyers. When all is said it is mother-wit that runs the world. Probably you laughed awhile ago, as I did, over that story in the Law Review concerning a famous jurist who was fording a little brook in his chaise and trying to wet the dry wheels by backing again and again into the stream, and finding that each time he wet only the same part of the circumference. An old darkey observing his efforts ventured to help him by turning the wheel round and round in the water until the felloe and spokes were all wet. "I never thought of that," said the absent-minded judge. He must have been greatly consoled by the reply: "Oh, well, some folks just nat'lly has mo' sense than others, anyhow."

How often we have occasion to return to that profound saying of Bacon, "Books teach not their own use, but is a wisdom without them and above them won by observation." It was common sense that made the law, and it is common sense that must apply it. In the war between our States a Massachusetts regiment was to be transported by train. The locomotive had broken down. "Is there any man here that knows how to mend this engine?" asked the colonel. A private stepped out of the ranks and patted the machine, saying, 'I ought to; I made her." That is what happens when the real lawyer puts his hand to the law. Some of the best lawyers were never admitted to the bar. More than once I have been consulted by some country magistrate, some backwoods justice of the peace, constable, or plain farmer, who has shown such a clear perception of principles, such a firm grasp of the situation, that I have felt like saying, "Why do you come to me for counsel? It is I that should learn of you." Of course, there are some questions that depend for their solution upon technical learning; but they are not a large proportion. Barring these I believe it is possible to state any correct judgment in terms that will satisfy the common mind. I always distrust a decision that cannot be made intelligible to the ordinary understanding. When Marshall was delivering one

of his subtle, far-reaching opinions a political opponent whispered to his companion, "It's wrong, all wrong." "Yes," replied his colleague, "but the man does not live that can point out wherein it is wrong." I do not pretend to say that the criticism was just in that instance. I don't remember what the instance was. But when that is the impression left upon a fair and candid mind,—a feeling that the argument may be right, but that the result is wrong,—the probability is that the opinion is wrong. If it is not wrong there has been a failure to put it on the true ground. Luke P. Poland, of Vermont, was one of the best judges and legislators we ever had. A friend of his, not a lawyer, had been elected justice of the peace. The judge said to him,—"I will give you a little advice. You will get along well enough if you never give any reason for your decisions. You are a pretty sensible fellow, and nine times out of ten your judgments will be right, but if you try to tell why, the chances are you will make yourself ridiculous." The true texts are those that shine by their own light. The sound judgment has a way of justifying itself even to the man in the street. It is the business of learning to make itself plain to the unlearned. Greatness can afford to be simple. And the highest wisdom uses the homeliest language. It is weakness and uncertainty that take refuge in obscure phrases. Have I not read of some sort of fish that secures its escape from its enemy by diffusing an inky substance through the water? Read the great judgments of Mansfield, or Marshall, of Gibson, of Shaw. How they commend themselves to the unsophisticated reason. Take one of Ben Franklin's sayings, one of Aesop's fables, one of Lincoln's stories,—how they find their way to the hearts and understandings of the masses! Choate used to say that Webster's words passed current like coin among the people. So do the plain-dealing words of Theodore Roosevelt today. Law is not something technical, something that smells of the lamp and belongs to the closet. Law is nothing stable, nothing desirable unless it is the sifted and garnered common sense of the race. You need never tremble for that kind of law. It is a tub that can stand on its own bottom. A code that can be understood and appreciated only by a class or a profession may fail, but a law that makes its appeal to the good sense and honest instincts of men at large can never fail. For a sound legal judgment is moral as well as mental. It is not enough to see things as they are. The great lawyer sees how they ought to be. His love of justice is as strong as his perception of truth is keen. It has been said, "Love is our highest word and the synonym of God." But if that be so, then the next highest word is justice,—"for justice all place a temple and all seasons summer!" What other excuse can government give for its existence than this—"to establish justice?" So it is that a good lawyer must have the qualities that go to the making of a good judge. He cannot conduct his case wisely nor advise his client safely unless he can foresee with reasonable accuracy how the court will be obliged to treat it when it comes before it. The best counsel is he who best anticipates the court's decision. You cannot make a good judge out of intellect alone. He must have a heart that can be touched with the feeling of infirmities. His blood must be red. Let him be pure and righteous as he may, but through his heart must throb the quick, warm currents of humanity. And above all he must love justice. He must long to see the right prevail. So must the lawyer—"the lawyer," I mean. He must be great enough to exult in his own defeat when he finds that he ought to be defeated. Lawyers do not like to be beaten; judges do not like to be reversed. But a judge who will not rejoice to see his own wrong judgments set aside—he may be great in learning and high in place, but the least in the kingdom of justice is greater than h

## APPENDIX V.

(Address of Gen. Joseph Sprigg.)

Mr. President and Gentlemen of the West Virginia Bar Association: At this season of the year "Peace on earth good will to men" is the sentiment and thought uppermost in the minds and hearts of most men. I am, therefore, delighted to meet and exchange fraternal greetings with the members of this Association under such pleasant influences.

It was, indeed, exceedingly kind and thoughtful in you gentlemen, to invite me to meet with and talk to you on this 20th anniversary of your Association; and, from the bottom of a grateful heart I thank you for it. I accepted your very kind and courteous invitation with great pleasure, because it afforded me an opportunity to renew old friendships and to make new acquaintances among the members of the West Virginia Bar.

Such an invitation from such a body of men, whose aim and purpose is to "advance the science of jurisprudence; to promote reform in the laws; to facilitate the administration of justice; to uphold integrity, honor and courtesy, and cultivate cordial intercourse among the members of the bar," I esteem a great distinction and honor. I assure you, gentlemen, I prize and appreciate it much more than I am able to express in words. This occasion, and my connection with it, shall always be one of the brightest memories of my life.

I understand I have been enticed within your jurisdiction, to answer a charge made against me concerning the birth of this Association. I am told I am charged with being the father of the West Virginia Bar Association, and that after the birth of the baby, I placed it in a basket, left it inside somebody's front door and then absconded, thus leaving the baby to the tender care of this cold and uncharitable world of ours. Now, gentlemen, this is a serious accusation, and I must meet it as best I can. I have reached that period in life when men are more disposed to avoid than to seek trouble. I am not so combative; do not like a "scrap" as much as I used to in years gone by. Hence, to the first allegation in the charge, I shall simply enter the plea of Nolo Contendere; but, to the second I must plead "not guilty." I shall insist, that when I left your State the baby was in good hands, and that its present condition shows it has been tenderly cared for.

Although I have the right to testify, in my own behalf, in this case, I am not going to say very much concerning my connection with the formation of this Association, truth requires me to confess that I did have an humble part in the transaction. But, I am not now, and never have been, ashamed of what I did in promoting the organization of this Association. On the contrary, I have always been exceedingly proud of it. I will go a step further, Mr. President, and say that I regard my acts in promoting the organization of this body of lawyers, as the most commendable in my entire career. Therefore, I am ready to assume all the responsibilities and take all the consequences resulting from my conduct in this regard.

Mr. President: If I am guilty, "there are others." If my memory is not greatly at fault, you Sir, should be numbered with the guilty crowd. And, there is my friend Wm. P. Hubbard—he is more guilty than both of us. There are not very many of the old crowd left, and it does seem to me we should all be punished alike. So far as I am capable of judging there is very little difference in the degree of our guilt in this matter.

When the West Virginia Bar Association was formed, a little over twenty

years ago, there were very few lawyers in this State who hoped or expected it to live to celebrate its 20th. birthday. When I first mentioned the subject to some of my lawyer friends, I must confess, I met with very little encouragement. Various reasons were assigned why such an organization could not be formed and maintained in this State. Political feeling and prejudices were running pretty high in the State at that time, and many thought that fact would prevent the formation of such a body upon a proper basis. It was also said, that the formation of such an organization would tend, largely, to increase the then existing prejudices among laymen against lawyers; that the formation of such an organization would result in actual harm to lawyers, in no good to the State or the administration of justice, and would prevent reform in the laws instead of promoting the same. There was another objection urged; this latter objection I regarded as more serious than any of the others. Many present remember, of course, the great lack of railroads and other means of transportation facilities in the State at that period; how difficult, expensive and inconvenient it was, at that time, to travel from place to place in the State. Many with whom I consulted insisted the lawyers would not undergo the inconvenience of travel and the expense to attend the meetings of the Association, and if organized, they said it could not be maintained for this reason alone. Perhaps there were other objections urged, but I remember the above as those most frequently urged.

When I was a citizen of your State, my home was in the valley of the South Branch, and I still have a vivid recollection of the time and money it required to make a trip from my home to the seat of government. Therefore, I had myself some misgivings, on this score, as to the success of the Association, even if we succeeded in forming it.

However, I think, all those who really desired the formation of this Association, fully recognized and realized the potency of all the objections urged against it. The more opposition we encountered, the more faith we seemed to have, that all objections were more imaginary than real. We had thoroughly satisfied ourselves, that as an organized body the lawyers of the State could and would exert a potent influence in promoting good government in this State. We believed, that with an organization of such a character as this, we could better uphold and maintain the honor and integrity of the legal profession and promote the best interests of the public, than we could acting in our individual characters. So we persisted in our efforts to form this Association.

My recollection is, that I communicated with almost every practicing lawyer in the State, either personally or by letter, and set forth to them as best I could the advantages to be derived from such an organization as this. I succeeded also in interesting several of the leading newspaper men of that day, quite a favorable sentiment was created in this manner. Mr. President and gentlemen: It required a good deal of persistent, hard work to form this Association, but to all of us who were interested in it it was "a labor of love."

In all this work I was ably and earnestly assisted by brother members of the bar in different sections of the State. Among them I recall the names of Mr. Wm. P. Hubbard and Col. Robert White, of Wheeling; John J. Davis, Sr., and Judge Camden, of Clarksburg; Charles J. Faulkner, Jr., of Martinsburg; John A. Hutchinson, of Parkersburg, the late Judges Green, Haymond, Johnson and Armstrong. All the lawyers in the circuit in which I lived rendered efficient aid in the matter.

Finally, we determined to call a meeting of the members of the bar, and make the attempt to organize an Association. After careful consideration, we fixed upon Grafton as the most accessible and convenient place to hold our meeting. A call for a meeting of the members of the bar, signed by 18 or 19 lawyers from different sections of the State, was published in most of the newspapers in the State. The objects and purposes of the meeting were briefly set forth in this call. The day named for this meeting was July 8th, 1886. On that

day there were present (including the local members of the bar in Taylor county) fifty-nine lawyers. Although it was, comparatively speaking a small meeting of the members of the bar in the State, still we were greatly encouraged by reason of the enthusiasm and determination manifested by all those present. It was agreed among us that day, that we would know no such word as fail in this matter. Then and there, in the court house in Grafton, The West Virginia Bar Association was organized. Eighteen of the counties in the State were represented in the first meeting, and forty-three of the lawyers present became members of the Association that day, by complying with the provisions of the constitution adopted that day, and I believe all the others subsequently became members.

I am sure all who were present at the first meeting enjoyed it, and we all returned to our respective homes determined to leave nothing undone or unsaid that would tend to promote the success of the organization, the purposes and principles for which it stood.

The first meeting fully demonstrated the utter fallacy of the claim put forward by some, that politics would prevent the formation of such a body upon a proper basis. There were several pretty strenuous partisans present that day; yet, not a word was said by anybody about politics in any form. I really do not believe any gentleman present even thought of politics during the meeting. We had no difficulty whatever in formulating and adopting a constitution and by-laws for the government of the Association, to which I think all fair-minded men could readily subscribe.

Before my "somewhat sudden exit from the State" (as brother Wm. P. Hubbard expressed it at your last meeting) I had the honor and pleasure of attending several of your annual meetings, and at the time I left the State I was fully persuaded the West Virginia Bar Association had been constructed upon firm and lasting foundations, and would live long after many of the "doubting Thomas's" were dead and, perhaps, forgotten.

This Association began life with 43 members representing 18 of the counties in the State. It now has a membership of over 300, representing nearly every county in the State, and "the cry is, still they come." It is today one of the strongest and most influential organizations in your great State. Members of the bar consider it an honor and great privilege to belong to this Association. It commands, because it is entitled to the respect and confidence of the general public. I think we may well consider the present strength and condition of the Association a very gratifying success. Mr. President: no member of your organization rejoices more sincerely than I do over the success it enjoys. Notwithstanding this is the first time, in many years, that I have had the honor and pleasure of being with you, I assure you I have always been with you in spirit. True, I have been a citizen of "Maryland, My Maryland" for quite a number of years, but my heart has always been in West Virginia. I have rejoiced with you in her marvelous development, in her increasing wealth and influence in the family of American States, and I trust her wealth and influence may continue to expand until she occupies a commanding position in the Union in favor of good government and "a square deal" between man and man.

For the formation of and the success of this organization, I relied confidently on the intelligence, patriotism, and broad-mindedness of the West Virginia lawyers. I sincerely rejoice to know I was not mistaken in them. Had I overestimated them, we would not be here today celebrating the 20th. anniversary of the West Virginia Bar Association.

Mr. President and gentlemen: many changes have occurred since the formation of this Association. The world has never known such strides of advancement in all the sciences, arts, commercial and industrial pursuits and wealth. I have time to consider but one feature of our wonderful progress. With only about a 20th of the world's inhabitants, our country has two-thirds (14,000,000,000) of the world's banking power (capital, surplus, deposits and

circulation.) Our ascendency in this respect has been acquired in the two last decades. Since 1890 the world's banking strength has grown 105 per cent, while that of this country has expanded 170 per cent, and that of New York City 200 per cent. Of the $2,500,000,000 of weekly average of the bank clearings of the 93 cities which make reports, New York contributes two-thirds. New York's bank clearings average 25 per cent in excess of London's. None of the numerous evidences of the increasing wealth of our country are more striking than the growth of bank deposits, including about five billions. From 1896 to 1900 there was a gain of 46 per cent; in the next four years there was a gain of 38 per cent and the present figures are 13.5 per cent above last year, and 130 per cent above 1896.

If, Rip Van Winkle like, one had gone to sleep when this Association was organized, and slept until the present time, he would scarcely recognize this as the same country, especially that part of it within the boundaries of West Virginia. Now, with this vast increase in the wealth or money power in this country all branches of industrial pursuits have greatly expanded also, so that we are confronted today with many of the most serious and far reaching problems in popular government.

Let us—Mr. President and Gentlemen—turn over a leaf, and other changes that have occurred since the formation of this body, remind us we are all mortal and must die. Many of our former friends and brothers who were present and participated in the formation of this Association are absent. They have finished their life's work and have crossed the mystic river into the great unknown beyond. Our deceased brothers were all honorable gentlemen, good lawyers and good citizens, and in both private and public life endeavored faithfully "to uphold integrity, honor and courtesy in the legal profession" and "to facilitate the administration of justice." Several of them were very near and dear friends of mine. I greatly miss them all. May "they sleep in peace, and wake in joy."

Among the gentlemen present at the organization of the Association who have since died, I recall the names of Judges James D. Armstrong, of Romney; G. D. Camden, of Clarksburg; J. Marshall Hagans, of Morgantown; A. F. Haymond, of Fairmont; James Morrow, Jr., of Fairmont; R. E. Fast, of Morgantown; J. D. Ewing, of Wheeling; John A. Hutchinson, of Parkersburg; Benjamin F. Martin, of Grafton, and Samuel L. Flournoy, of Charleston. All the men I have mentioned were sincere friends of this organization and the principles and purposes for which it stands.

Permit me to say—Mr. President and Gentlemen—in my judgment, there is much more necessity for the continued existence of this Association than there was for its formation, twenty years ago. If you will bear with me for a short time, I will endeavor to give you my reasons for this statement. A distinguished Ex-President of the United States Senate, in a carefully prepared opinion recently said:

"The grave danger now confronting this Republic is the growing contempt for law."

All thoughtful men must concede there is abundant reason for this warning. Disregard of law has fastened itself upon the body politic, like a cancer, and is daily gnawing at its very vitals. The Government of the United States, in theory at least, gives more rights to the citizen than any other in existence. But, many of our citizens think so little of their obligations to this Government, and the general welfare, that they seem utterly indifferent as to what is going on all around them, so long as they do not feel the effects directly. The American people are accustomed to look on our form of government as a natural condition. That this government is mortal and can die is a thought utterly foreign to the average American; they'll tell you it is folly even to discuss the subject. I am sorry to say, however, history does not encourage this cheerful view of the matter. Perhaps this is the best Republic that has ever existed; but, it is not the first nor the oldest.

Mr. President and Gentlemen of the Association: We may count our wealth as the sands of the sea, and our "Captains of Industry" and "High Financiers" by the hundreds of thousands; the domes of our capitals and the spires of our churches may pierce the clouds and glitter among the stars; but, unless these people are welded together by those high principles of law and morality which form the foundation of enlightened citizenship, our magnificent governmental superstructure will surely decay and crumble away into utter ruin. If there be no civic virtue and aggressive patriotism in the people, external grandeur will count for nothing. When the laws are silent, or imperfectly administered, wicked and corrupt men feast and fatten at the public expense. Under such conditions the public conscience is asleep, and the laws become mere merchandise on the market. Then the Republic certainly must be in danger. "The reign of the law is the rule of the people."

Strive as we may to disguise and conceal it, the fact is, there is in this country, today, a superabundance of very aggressive rottenness, in both private and public life, and a paucity of aggressive patriotism. If we wish to preserve our institutions, we must make patriotism as aggressive as the existing rottenness. When we accomplish this, a long stride will be taken towards "the reign of the law" and "the rule of the people."

Disclosures tending to civic, social, and commercial unrest are of almost daily occurrence. The shocking conditions brought to light by the investigation of the life insurance companies, in New York, the constantly growing list of embezzlements and robberies made public every day; "the carnival of graft" exposed in both public and civil affairs, and the use of every unfair and oppressive method that phenomenal astuteness can contrive and untiring energy and vigilance can bring to bear in the dishonest accumulation of gain, demand that all men who love their country and its glorious institutions should strive to crush it out, and to reestablish old fashioned honesty in the country.

In the beginning of this lamentable condition, it was said, it existed only in our larger cities. It was not very long, however, before we learned that State officials were forgetting their high positions and becoming involved in the meshes of greed. Then, a little later on, there came another awakening, and the country was shocked by the revelation that officials of the Federal Government were making "a private snap" of a "public trust," and that the departments were honeycombed with this thing misnamed "graft." As time passed, it was discovered that in the growth of our commercial activities the spirit of "graft" had entered other departments of life.

So—Mr. President and Gentlemen of the Association—it has come to pass in our day and generation, that in almost every department of business, in almost every walk of life, in the conduct of the Government, among the representatives of the people in Congress, in State Legislatures, in the conduct of our county and city governments, public schools and public charities, and in the conduct of private trusts, the same rule of betrayal of confidence, bribery, corruption and theft is heard.

Careful, cautious men, pay their earnings to insurance companies to make provision for their families, and the officers of these institutions steal it by the hundreds of thousand dollars. Men of supposed high characters are chosen by the people to represent them in our legislative assemblies, and they betray their sacred trusts for paltry dollars and cents. The President of the United States appoints a committee to ascertain how the executive departments of the Government are conducted, and its report is a shameful record of thievery and crime.

Is it not time to sound the alarm and sharply call public attention to this deplorable condition of affairs? I think it is, for there really is no condition in life exempt from the tentacles of greed and graft. Why, Sirs, we have actually become so considerate of men's feelings that we misname this thing "graft." Our old fathers called such things theft. So should we, members of the legal profession, call these things by their right name. The prophet

thundered denunciation against people "who called evil good and good evil; who put darkness for light and light for darkness." We should cease calling these things by their wrong name ourselves, and beg our fellow-citizens to do likewise. There is no distinction whatever between graft and theft.

If a poor, obscure man, takes $10.00 belonging to another, we call him a thief and send him to the place where men wear stripes. But, if a president or some other high officer of one of our big corporations takes a hundred thousand dollars of other people's money, we call him a "Captain of Industry" or a "High Financier" and his conduct "graft." The man who betrays a trust and steals money belonging to others, should be called a thief and treated as a thief. Gentlemen of the Association, there will be no material change for the better, until this is done.

Men whose high standing in the community has enabled them to float dishonest companies, which drew into their coffers the savings of the poor, bringing loss and ruin to thousands, have gone unwhipped of justice. As exposure after exposure scattered devastation like an exploding bomb, the wreckage has been cleared away, and the same game renewed again as if nothing had happened. The craze for quick money getting has become almost universal, because the prevailing standard of success is its possession. The old fashioned merchant, whose good name was his most highly prized asset, and who went on from year to year, slowly accumulating a competence or a moderate fortune, and ambitious for nothing more, has become a tradition. The young people who used to settle down in contentment to build up new homes about the old roof tree, are today an extinct species. The former standards of lineage and culture have been pretty nearly swept away, and society has largely been taken possession of by newly rich, commonplace, uneducated men who have blundered upon a fortune, or secured it in some unlawful manner. These men have built palaces, and snobs, hypocrites and sycophants have flocked around them, making their houses social centers. No class of men, in the country, have carried their heads higher than those who have bought their places in social and public life.

The chief corner stone in our structure of government, laid in the popular will, is being undermined when corporate power, intoxicated with money getting, shakes off all restraints upon its cupidity, and deliberately proceeds to feast and fatten upon the carcass of a seemingly helpless people. Greed and theft seem to dictate the election or appointment of those who hold many of the places of honor and trust; hence. the patriot's dream of justice and power. in alliance is shattered to the winds.

Every day we see mammoth corporations, created by law for public purposes and utilities, evade, elude and defy the laws of the country, and they have become seemingly so entrenched and fortified in power that they prey at will upon the people. For their own gain they direct and control city and State Governments. More than this; they fill the lobbies about the Nations Capital, winter after winter, and it is believed by a large number of people that they have elected United States Senators. So when the people demand relief from such galling conditions as these corporations have imposed upon them, they rise like frightful specters to prevent the representatives of the people from yielding to the voice of patriotic duty.

Even the food products of the country are largely controlled by corporations or concentrated capital in utter contempt of the laws. Professing to reduce the cost to consumers, these trusts or corporations have mercilessly stifled competition in violation of law, and by combinations with others, have made agreements resulting in fixing of prices from a wire nail to the steel rails which make the tracks of the railways upon which the products of the country are carried. Corporations, trusts, huge combinations of capital, or whatever you may please to call them, all actuated and controlled by a single thought: to-wit, insatiable greed, and all united in contempt of law, secure special freight rates

or a system of rebates from railroads, which result in giving them a monopoly of all descriptions of articles desired.

Now, talk as you please about such conditions, I say it is a most pernicious system, because it enables the strong and lawless to drive a weaker competitor into bankruptcy and ruin. Yes, it does more: it abolishes individualism, all individual effort, enterprise and ambition.

Now, Mr. President and Gentlemen: we must all, I think, agree that the conditions which I have imperfectly and feebly attempted to describe, are exceedingly harmful and dangerous to the peace and happiness of the people of our common country. Because of these deplorable conditions, there is abroad in the country today a spirit of discontent and unrest. There is a very strong disposition, among a large number of well meaning people, to resort to the National Government for relief from the intolerable burdens imposed upon the masses by these unlawful combinations of capital and these mammoth corporations. In my deliberate judgment, herein lies our greatest danger, beside which the teachings of the Socialist doctrinaries are harmless. **Government Centralization** and **State Socialism** are (in my humble judgment) the twin enemies of rational liberty, and much more to be dreaded by the people of this country than all the theories that Communism has ever propagated. The strides this country is making in **State Socialism** fixes it, in my opinion, as the greatest question of the time. When he was walking off with the head of decapitated St. Dennis under his arm, Voltaire is said to have remarked "it is the first step that costs." Once taken, no living mortal man can predict where it will end in transforming the political institutions of this country.

Many good and timid people are alarmed by the progress Socialism seems to be making here and there. The doctrines and theories of the genuine Socialists, however, lose most of their danger when it comes to putting them in practice, for they are utterly impracticable.

But, with the insidious approaches of **State Socialism**, through the intervention of the National Government, we are confronted with a very different and much more serious question. And, gentlemen, what seems most remarkable to me is the fact, that those who usually make the most noise about Socialism are among the foremost to invite its advance through Government intervention, the only route in my opinion, by which it can be even partially realized in the United States. The corporations and combinations of capital and labor are (it may be unconsciously) greatly promoting Socialistic theories and doctrines in this country, and why the leaders among them do not see it in this light is a mystery to me.

Gentlemen, this (in my judgment) is a very serious matter, and demands most serious consideration and attention. It really is nothing more nor less than the old question of State sovereignty in a modern dress. There is involved in this question, gentlemen, a broad national public policy, far reaching in its results and consequences. If we carry it to its logical conclusion, home rule by the several States of the Union, is placed in imminent peril. It seems to me, if we once concede that Congress has power to control and regulate insurance and such like corporations, to suppress traffic which it deems injurious to the public morals, we give to that legislative body a tremendous power of local regulation, restrained and controlled only by a majority of the men who happen to constitute the Supreme Court of the United States. It is unquestionably very much safer to observe the well known constitutional distinction between the police and commercial powers of our federal government. In this connection, pardon me, for directing your attention to an extract from an able opinion of our present Chief Justice in the case of U. S. vs. E. C. Knight Co. He said: "It is vital that the independence of the commercial and of the police power, and the delinitation between them, however sometimes perplexing, should always be recognized and observed, for while one furnishes the strongest bond of Union, the other is essential to the preservation and to the autonomy of the

States as required by our dual form of government; and acknowledged evils however grave and urgent they may appear to be, had better be borne than the risk to be run in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

You will also find food for much serious thought on this subject in an able address, delivered by Mr. Justice Brewer, before the graduating class of the Wisconsin University a few years ago. Discussing this subject, Justice Brewer said: "I have presented enough to show there is in various directions an increasing effort to centralize power at Washington and make the National Government more far-reaching in its functions. The constitutional tinkerer is abroad in the land. To my mind there is danger in this tendency. If it continues it will end in a single centralized government instead of that unique federal system under which we have hitherto lived and prospered." * * * * * "A centralized government may be more efficient, more powerful, and yet it is not the form of national governmental organization which makes the most of the individual." * * * * * "I am frank to say that I do not believe popular government is possible in a great nation, under any other than a federal system. Take this nation, now numbering 70,000,000 of people, and extending from Ocean to Ocean, from the Lakes to the Gulf. If the people every where become accustomed to look to Washington, for the laws to control their lives and their business, it will not be very long before, although the forms of liberty may be preserved, the real power will be vested in an individual or a limited number who adroitly manipulate the politics of the land to their own advantage. The boss in local politics who, notwithstanding all denunciation, seems able to maintain himself in power, will be succeeded by the boss in the Nation. More than this, there is a constant tendency in centralization to corruption. Human nature has not yet become so strong, so pure that it is beyond the reach of temptation. We are living in a day when wealth is accumulated with great rapidity, and if power be centralized you may be sure that enormous temptations will surround those who are temporarily entrusted with such power. Even today, when only a limited amount of power is vested in the National Government, every one sees at Washington, during each session of Congress, a multitude surrounding that body, seeking in one way or another to induce such legislation as will inure to their advantage. It goes without saying, that Washington is the great lobby camp of the world."

Since Judge Brewer delivered that address to these young men, the tendencies he warned them against, have gradually increased with each passing year. The reason for it is because we have allowed these mammoth corporations and combinations of capital to increase their power. Unless this dangerous tendency is checked and finally eradicated from the minds of the people, it must "end in a single centralized government instead of the unique federal system" constructed by our fathers, under which we have grown to be one of the strongest nations on earth. Like Judge Brewer, I do not believe popular government can exist in a country so large in both territory and population, as this, under any other than a federal system.

Now, Mr. President and Gentlemen of the Association, I think we should all deeply regret, that there is a class in our profession who are not blameless in producing the lamentable conditions to which I have alluded. We have a class known as "High priced, influential lawyers," who work out bold and ingenious schemes by which the so-called "Captains of Industry" and "High Financiers" (individual and corporate) are enabled to elude or evade the laws made to regulate, in the interest of the public, the use of vast wealth and capital. This class of lawyers have aided the rascally promoter, whose chief instrument is misrepresentation and falsehood, and whose sole capital is wind and unblushing impudence; the man who manipulates the assets of banks, railroads and other corporations so as to wreck the property placed in trust with him; the officers of life insurance companies who conveniently forget the marked difference between "mine and thine," and put into their own pockets the money

that really belongs to widows and orphans. This class in our profession has done infinite harm to the profession as well as to the country. They have blazed the way, and for money, for unscrupulous men to commit great and irreparable wrongs in the name of the law. These men attempt to justify their conduct by the false claim, that it is a lawyer's duty to do everything to succeed for his client. No such professional conduct has ever received the approval of the legal profession. On the contrary; such conduct has always been condemned and denounced by all honest men in the profession. It is potential in creating and pandering to the popular prejudice against lawyers, and withholding from our profession the full measure of public esteem and confidence which belong to the proper discharge of its duties. This claim is only set up by the unscrupulous as a defense when engaged in questionable transactions.

It should be most gratifying to lawyers of the present day, to know that no class of men in the past have fixed a higher standard as a prerequisite to membership of his profession than the lawyer himself.

Quintillian said: "The advocate will not undertake the defense of every one; nor will he throw open the harbor of his eloquence as a port of refuge to pirates."

Pasquier said: "Do not undertake any cause which you do not believe good, for in vain will you attempt to persuade your judges, if you are not first persuaded of the justice of your cause. Combat for truth, not for victory."

Sir Edward Coke said: "Fraud and falsehood are against the common law; and therefore, if the client would have the attorney to plead a false plea, he ought not to do it."

Lord Langdale said: "The zeal and arguments of every counsel, what is due to himself and his honorable profession, are qualified not by considerations affecting his own character as a man of honor, experience and learning, but also by considerations affecting the general interests of justice."

Your own Code of Ethics says: "The purity and efficiency of judicial administration, which under our system, is largely governmental itself, depends as much upon the character, conduct and demeanor of attorneys in their great trust as upon the fidelity and learning of courts, or the honesty and intelligence of juries."

"There is perhaps no profession after that of the sacred ministry, in which higher toned morality is more imperatively necessary than that of the law."

**"The attorneys office does not destroy man's accountability to his Creator, or lessen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand, violation of law or any manner of fraud or chicanery for the client's sake."**

I might, my Brethren, give you quotations of like import indefinitely; but, these must suffice for my present purpose, which is, to call attention to the high standard fixed for the integrity and government of the members of our honorable profession, and to ask the members of this Association to maintain and preserve this high standard in West Virginia. As I have said, it is exceedingly unfortunate for the country and our profession, that some very able and learned lawyers have been subsidized, not to uphold and vindicate the laws, but to do everything that can be devised, by legal acumen, to evade and elude the laws.

I hold that lawyers, more than any other class of citizens, should always be leaders of public thought, molders of the public conscience, and exemplars of all that pertains to the enactment of wise and wholesome laws, and in all that ought to control in their honest, faithful and impartial administration. It was so in the organization of this great popular government of ours; and, in the main it has been so ever since until run-mad commercialism and the "get rich quick" craze tempted much of the ability in the profession away from the time honored landmarks established by the grand old lawyers, who worshipped in truth and in spirit at the shrine of justice and truth, in the purer and better days of the profession and Republic.

Where we find no law, there is neither civilization nor lawyers. Therefore,

our profession is "as ancient as the magistracy and as necessary as justice." From the very earliest dawn of civilization on down through all the succeeding ages, wherever there existed a government and law by which that government was regulated and controlled, whose people had wrongs to be righted and rights to be defended and protected under the laws, there we find the lawyer a devotee to her laws and a defender and protector of human rights in her courts.

As a class, lawyers have always been held in high esteem by their contemporaries. Their love for rational liberty, for law and good government, and their learning and high toned morality and honesty justly entitled them to this high esteem. There is no reason at present (except that furnished by the mercenary members of the profession) why they should not still be held in the same high esteem. The fame our profession has acquired in England, the mother of the common law, is as imperishable as English history. The names of her great legal lights are household words where ever the English language is spoken, and the profession of the law is now, it always has been, held in the highest esteem in that country. As evidence of the high esteem in which lawyers have been held in our own country, I need only cite the fact, that all but six of our Presidents have been lawyers.

Further; no class of men have done more to secure, establish, and safeguard human rights than lawyers. In fact, no great principle of civil or religious liberty, or of free government has ever been secured and safe-guarded except by the exertions and through the influence of lawyers. As a general rule, men engaged in industrial pursuits, in trade, commerce, or manufacturing give little thought to such matters as long as they are permitted to pile up additional dollars. They are for passive obedience to the powers that be, so long as they are making more money. Not so with lawyers, however. We prefer liberty and good government with a moderate amount of this world's goods and comforts, to riches and misgovernment. The lawyer was one of the leading factors in the making of liberty which the people of this country enjoy. And, let me emphasize the fact, that in making liberty for himself, the lawyer insisted upon liberty for all. We have never asked any liberty for ourselves which we were not willing all should enjoy. It was a lawyer who thought out and penned the Declaration of American Independence, and the great fundamental, foundation principles of the American Constitution emanated from the brains of American lawyers. The learning, the far-sighted statesmanship, and devotion to liberty and human rights on the part of American lawyers, may be seen in the fifth and sixth amendments to our federal constitution. The great right secured to the citizen by these amendments, may seem quite common place in our day; the uninformed and thoughtless may look upon them as rights always enjoyed by the citizen. But, it is my duty to say, however, that such is not the fact. As lawyers and students of history, the fathers of the constitution knew that not a single right thus secured but had been previously repeatedly denied the citizen; that every one of them had been purchased by the patriotic blood. As lawyers, statesmen, and students of history the makers of our constitution knew the only safety for the citizen, even in a popular government, was to bulwark and buttress these great and inestimable rights in the written organic law of the land.

In an address before the Harvard Alumni in 1904 by that (in many respects) remarkable man, President Roosevelt, I find this statement:

"This nation never stood in greater need than now of having among its leaders men of lofty ideals, which they try to live up to and not merely talk of. We need men with these ideals in public life, and we need them just as much in business and in such a profession as the law. Every man of great wealth who runs his business with cynical contempt for those prohibitions of the law which by hired cunning he can escape or evade is a menace to our country, and the country is not to be excused if it does not develop a spirit which actively frowns on and discountenances him. The great profession of the law

should be that whose members ought to take a lead in the creation of just such a spirit."

I am frank to say I do not agree to all President Roosevelt says and does; but, I do most heartily agree with him in the sentiment just quoted. I am one who believes that our profession is more potential for good than any other, unless it be that of the sacred ministry, and that we ought to take the lead in creating a public sentiment against the men of great wealth who run their business "with cynical contempt for the prohibitions of the law." Many remedies are suggested or prescribed for the cure of the ills which I have alluded to; but, Mr. President, in my humble judgment, the only sure cure is largely in the hands of the legal profession.

This, therefore, is my reason for saying there is more cause for the continued existence of this Association than there was for its organization twenty years ago. Man made laws are of no practical avail, in a Government like our's, unless they are supported and upheld by the virtuous and patriotic people of the country. If the great heart of the country does not support and uphold the laws enacted for the public good, the laws (no matter what their character may be) will amount to very little as a corrective of these evil conditions.

Now, there is no class of citizens who can do more in creating a public sentiment in favor of the impartial enforcement of the laws, civic virtue, and "the rule of the people" than the members of our profession. The nature of our profession, our education and trtaining, our devotion to law, peace and good order and even-handed justice between man and man, all enable us to acquire and exert a powerful influence in the State. All that is necessary on our part, in order to be of great service to the State, is a firm determination to do our full duty as good citizens. We owe this duty to our "ancient and honorable profession;" we owe it to ourselves as honorable men; above all we owe it to our beloved country and its glorious institutions.

We should never forget the fact, Mr. President and gentlemen, that upon the men in our class has been placed in the past, and must needs be in the future (so long as government controlled and regulated by law and justice survive) the highest, weightiest, and most solemn duties devolving upon citizenship, to-wit: the defending of the lives, liberties, and property of our fellow-men, and the faithful, fearless, and impartial administration of justice. From the men in our profession is chosen the judge, upon whose decisions hangs the lives, liberties, property and reputations of the citizens. The judge is the oracle of the law, the arbiter of right and wrong, the high priest in the temple of justice, and his power for good or evil is limited only by his conception of the high and sacred duties and grave responsibilities of his office.

From the men in our class come the trusted counselor, unto whom with perfect confidence are unbosomed more of the secrets, trials, troubles and sorrows of the human heart than the confessional; whose aid, advice, counsel and sympathy are sought by people in every walk of life, and whose field of labor covers nearly every phase of human activity. Hence it is not at all remarkable, that the members of our profession wield so much influence in their respective communities, nor that the people hold us to such a strict accountability for our conduct in public affairs as well as in the discharge of our professional duties.

Mr. President: I think I can safely say that the bench and bar of this country have made a record of which both lawyers and laymen can be proud. There are cases, of course, where members of the bench as well as practicing lawyers have either fallen from the high standard fixed for the learning and integrity of our profession, or never measured up to it. But, it must be kept in mind, that Judges and lawyers are but men—human beings, subject to all the frailties of poor human nature. Therefore, I am sure all fair-minded men must concede these cases are exceptions to the general rule. These cases too, are the sources from which come most of the unfair, unjust, and frequently severe criticism of the entire body of the profession. Why, Sir, such things happen in all professions and in all walks of human life, and so long as human nature con-

tinues as frail and liable to temptations as it is, we can not reasonably expect our profession to be wholly exempt from such unwelcome and unpleasant occurrences. But, proper, prompt, courageous action by organizations like your's will minimize them.

The trial and merited conviction of that legal parasite in New York, a few days ago, was a long step in the right direction. Such lawyers as Abe Hummel and those who employ their learning in the task of enabling rich clients, corporate and individual, to circumvent and override the laws, are menaces to the virtue and decency of the country. Yes, more than this: they are doing that which encourages the growth of a spirit of contempt for the laws and those who administer them; they are encouraging, in the minds and hearts of the people, a spirit that disbelieves in the efficacy of all laws. Gentlemen of the Association, such a spirit as this must inevitably breed among the people of the country a spirit of hostility to all legal restraint, or it will develop a demand for the most drastic laws to control these people. Sir, the day of judgment is often separated by a long interval from the day of transgression. "The mills of God grind slowly", but, as certain as sun-shine, there comes to all men and to all nations a time

"When the full cup runneth o'er
And mercy can endure no more."

Therefore, in my humble judgment, the rich individuals and powerful corporations are slowly piling up offenses against the day of wrath; they are their own worst enemies. Far better would it be for them to obey the laws.

Now, Mr. President and gentlemen of the West Virginia Bar Association, I believe if these lamentable conditions and evil tendencies are ever arrested and uprooted, that the leaders in the movement will come from among the men in our profession. Acting through organizations like this, and in our individual characters, it is our duty to arouse our fellow-countrymen to a realization of the danger in such conditions as I have mentioned. Rest assured, my brethren, if we fail to discharge our duty in this regard, we will not be excused before the world's bar of public opinion. The legal profession can not afford to forfeit the high esteem in which it has hitherto been held by the law-abiding, liberty loving people of the country, for the sake of mere riches. We must courageously maintain the past high and honorable record of the profession, if we would hold fast to public esteem. We must not tolerate dishonest, unscrupulous members of the profession. Reports are showing increased numbers of disbarment proceedings, it is true, and while this is a matter for rejoicing, still the good work needs pushing all over the country, so that the best element in our profession shall control in every city and town.

One of the main objects of organizations like this is to enforce vigorous action against the unscrupulous and dishonest members of the profession. Organizations like this must rid the profession of the vampires who not only disgrace the bar, but disorganize and demoralize the communities in which they live. I am sorry to say it, but in my judgment, bar associations are not half realizing the power that lies in them for good. They have been pursuing a timid, vacillating course in these matters, rather than go to the trouble in a manly, courageous manner. I trust this may never be truthfully said of the West Virginia Bar Association. I sincerely trust this Association will put forth its best efforts to bring about these much needed reforms.

Permit me to say a few words more regarding the tendency to centralization of power in the National Government. Of necessity, under the federal constitution, at least 95 per cent of the matters that relate to life, liberty and property, belong to the States, and unless we change or simply disregard the organic law of the land, must remain with the States. The people must be made to realize this fact; also that they must make their own State Governments effective in order to contend with matters affecting life, liberty, and property. The people appear disposed to fly to the National Government because it apparently acts, and therefore, they seem to think it acts better. They forget, however,

that those who act for the National Government come from the same source as do those who act for the State Governments, to-wit: from the people of the several States. There is not a power contained in the federal constitution, regarding nearly all the questions now uppermost in the minds of the people, that is not contained in greater measure in the States. Why—Mr. President and gentlemen—there are many States in this Union larger than some of the great nations of the world, and to contend that they are not able or capable of dealing properly with these problems, is nonsense, in my opinion. In the early history of this Government, the people feared the Executive; now, they seem to fear the legislative bodies. They seem to have reached an almost total disregard of the powers of the States. Now, I think this is to be greatly deplored, and I think the legal profession should strive with all of its power and influence to revive a spirit of love, loyalty and respect among the people for the old land-marks.

Mr. President and gentlemen: the subjects to which I have feebly attempted to call your attention seem patent and undeniable, and I know we all deplore them. Do you not think it is time that we, members of the legal profession, should seriously consider them? Do you not think it is time we should consider how the demoralization of the public conscience, worked by them, can be cured, or at least amended? I would rejoice to see the West Virginia Bar Association take the lead in creating and arousing a public sentiment in favor of a return to old fashioned honesty in the public, private, and social life of the people of this country. Upon no class of lawyers is the necessity more imperative to maintain the high standard hitherto fixed for their profession, than it is upon the lawyers of this country. It is equally as imperative upon them to sustain and maintain our unique federal system of Government, and the rights of the citizen therein contained, because no class of men in the original thirteen colonies exerted a more potent influence in establishing this system, and none rendered more valuable service in the council chamber, in the halls of legislation, or upon the battle fields of the revolutionary war.

Unhappy, indeed, is the lot of the citizen of any country when the learned, fearless, honest, conscientious lawyer does not raise his voice in defense of the rights and liberties of the people. There never has been a more unyielding enemy to tyranny, dishonesty and corruption than the fearless, high toned lawyer who knows his own and the rights of his client. I hope the race is not yet wholly extinct.

Mr. President and gentlemen, I hope you will not regard me as presumptuous, if I ask you not to permit the high standard heretofore fixed for the integrity of our profession to be lowered an iota in your State. Make West Virginia too unhealthy for the shysters, vampires and bloodsuckers in the profession; also for those who employ their learning to aid rich clients—corporate and individual—to override and circumvent the laws enacted in the interest of the public. Discountenance and frown upon both classes because they are enemies of our "ancient and honorable profession" as well as of good government.

Now, in conclusion Mr. President and gentlemen, let me say I would very much regret it, if any of you should misunderstand me. Do not, I beg you, class me with the enemies of wealth and of corporations, for I assure you I am not. I honor and respect all men who have grown rich by honest effort and "square dealing." Instead of injuring such men, or encouraging others to do so, I would build up around them and their riches, for their protection, good laws and enforce them vigorously and fearlessly. More than this; I would also create a healthy public sentiment favorable to such men. I think I fully realize and appreciate what wealth, corporations, and the combinations of rich men have done in developing the resources of the country. But, I believe honest industry should be the sole fountain of wealth, and that when a man acquires wealth he should be required to obey the laws and respect the rights of his neighbor, just as the rest of us have to do. I would not cripple the great corporations in any manner, but I would compel them to obey the laws made in

the interest of and for the protection of the public. I would, in the first place, have wise and wholesome laws on the statute books: then, in the second place, I would require—all individuals and corporations—to stand upon an equal footing before the law. This is all I contend for in this regard; and, this is what I say the lawyers of the country ought all to contend for.

Mr. President and gentlemen of the West Virginia Bar Association: I humbly beg your pardon for trespassing so long upon your time and patience. I thank you for the attention you have given my poor effort to say something of interest to you and your organization. Permit me again and again, to thank you for your kindness to and courteous consideration of me. Most sincerely do I wish you all a happy and prosperous new year, and may "God be with you 'till we meet again."

## APPENDIX VI.

### A Retrospect.

(W. P. Hubbard, Esq., Wheeling.)

In 1886, nineteen West Virginia lawyers requested the members of the bar of the State to meet at Grafton on July 8th to form a State Bar Association. They were thrifty enough to ask the newspapers of the State to keep publishing the call for the meeting free of charge, and some of the newspapers were unsophisticated enough to do it. Both lawyers and newspapers have changed some since that time.

Forty-three lawyers met on the appointed day. The meeting was called to order by Joseph Sprigg. His name headed the call for the meeting, and his zeal and efforts did much to make it a success. In an opening address he outlined the purposes of the proposed Association and the methods by which they might be carried out. In the address and in the call prepared by him the object of the Association was formulated as it now stands in our constitution.

This Association is a child wise enough to know its own father, and by that name it calls General Sprigg. We are sorry that he has been separated from us, and now that we are almost grown up we are glad that he is with us in our family reunion at this appropriate season.

Of the original forty-three members there were then three judges; eight have since gone upon the bench, continuing to advise and aid us; fifteen have for their share in this reunion their names in our obituary records and their memories in our hearts. Of those of us who have been left where we were when this Association was founded, many are here today and none have lost their interest in the Association.

One thing notable in the story of the Association is the disappointment felt, and from time to time expressed, by its warmest friends, that it has not accomplished more. President Price, at the fourth meeting, President Willey, at the eighth meeting, and others from time to time, have said this; sometimes in tones of surprise and always in those of regret. Perhaps we have expected too much from the Association.

In its early history it had some things to contend with which now have passed away. The first weakness which was manifest was the small attendance at the meetings, and the next, or perhaps it was parallel with the first, was financial weakness. Once it resolved that some dues had been collected improperly, but that it was really so hard up that it could not afford to pay them back.

Another trouble, of which some symptoms are still occasionally manifest has been that those appointed to submit papers, or open discussions, have not done so.

But the Association is getting well over those difficulties, which perhaps were nothing more than the usual infantile diseases.

An element of weakness about which I may have more to say, and which has always existed, is the failure of the standing committees to discharge their duties. As a general rule the committee on admissions has been absent in a body from the opening session. Matters of vital importance to the Association,—if anything is vital to it,—have been referred to standing committees, and usually that has been the last of them. The last two or three meetings have shown marked improvement in these respects. And there have always been

some shining exceptions, some men who the Association knows will and do attend to the matters confided to them. If I should undertake to name them I might be called to order for violating the spirit of the provision of our constitution against votes of thanks to members of the Association—but we all know who they are.

Perhaps before considering what progress we have made, it may be well to consider what it is that we have set ourselves to do. The second article of the constitution is,

"The Association is formed to advance the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession; to encourage thorough, liberal education, and to cultivate cordial intercourse among the members of the bar."

At the outset the Association was naturally a little timorous. Our days of old were not our brave days. At the Grafton meeting one rash man proposed that we ask Congress to repeal the statute in force which conferred circuit powers on the United States District Court in West Virginia, and to provide for a circuit court such as existed in almost every other district in the country. There was general consternation, and the resolution after discussion was referred to the committee on Legal Administration and Judicial Reform. The secretary did not think it safe even in that "swallowing gulf of dark forgetfulness and deep oblivion," and so he made the minutes show that the Association had refused to consider the resolution. The next meeting had to correct the minutes so as to show the reference. Congress shortly afterward passed an act such as was suggested, but so far as our record shows the committee on Judicial Administration and Legal Reform is still considering that resolution.

The Association used to get frightened at little things like a resolution advocating the printing of circuit court dockets.

After a time it mustered courage enough to try to bring some things about. Ten years ago I catalogued them as follows:

Increased compensation to judges;

Improvement in the phraseology of statutes;

The taking of testimony of witnesses in chancery cases in open court;

A method of trial in which the facts may be found by the jury and the law applied to them by the judge, instead of the law being found by the judge to be applied to the facts by the jury, with a view to preventing reversals and retrials of rulings of law which may have been of no influence on the verdict; or, failing that reform, at least one which would

Require the giving of instructions to the jury before argument; or at the very least

Prevent the reading of law to the jury;

To reform the laws affecting land titles;

To secure uniformity of legislation with other States on such matters as divorce and the acknowledgment of deeds;

To prevent abuses under our corporation laws;

To lessen the delays of litigation; and

To secure a higher standard of admission to the bar.

Out of this list the first thing and the last, and a very little one in the middle have come to pass, with some aid from the Association; but as to all the rest not much more has been put to our credit in the second decade than in the first.

In the later years of the Association earnest efforts have been made to have judicial nominations made otherwise than in political conventions, and as a step toward this, to have such nominations, if made by political conventions, not made by those which put the State ticket in nomination.

There has always been a fairly general sentiment among the thoughtful members of the Association that judicial ought to be divorced from political nominations. Perhaps this sentiment is usually expressed with a little more

emphasis by the members of the Association who happen to belong to the party out of power for the time being. Some impression has been made on the politicians. The minority party has been plainly willing to nominate candidates for the Supreme Court of Appeals at a convention other than that called to nominate the State ticket. The majority party in 1900 authorized its executive committee to take the same course, and in 1904 the proposition to nominate in that way only failed on an equally divided vote of the State committee.

It might be interesting to speculate whether if that proposition had been put in force by both parties, other men would have been named for judges of the court of appeals than those who were in fact nominated. Perhaps so as to one, in the other three cases probably not. At any rate it is hardly likely that better men would have been chosen under the circumstances. Considering the increase which has been made in the salary of the judges, the list of men offered for the consideration of either party was remarkably short; perhaps it would have been longer if the nominations had been made in a way more according to the notions of the Association. No one can tell.

May there not be some question whether the academic and impersonal sort of consideration which the Association has been giving this matter is calculated to accomplish marked results. We think we are at work to create a sentiment in favor of the selection of good men for judges and in favor of a good way to make such selection but when the people ask who would be good judges and when the Association might speak effectively it is strangely silent. Its conservatism if not its constitution shrinks from telling voters just what they want to know. It is at work for conditions but not for candidates. It expects politics, with live personal interests, to get out of the way of the Association's impersonal sentiment.

To be sure, there might be danger of creating feuds and enmities in the Association if it should name the candidates whom it preferred, but I believe it would be found standing substantially together for the choice of the best. Here is a case where self interest and civic duty would unite. Lawyers want good judges, because they better than any one else know the necessity for such. The ignoble motives are at one with the higher. It is to the interest of the practicing lawyer to have a capable judge who will be honest and prompt and right.

Such a judge reduces the labor and increases the earnings of the practicing lawyer. The good lawyer has more clients than the poor one, and when he goes from the bar to the bench his clients must go to some of those who have been his rivals, generous rivals it may be, but still rivals.

Perhaps as to the election or appointment of judges it may be worth while to get into personal politics. The people will be right enough on this question. What happened in some of the circuits at the recent election demonstrates the existence of a spirit of independence of party when an occasion arises which calls for the display of spirit. Where judges are to be appointed the appointing power would be glad to have the judgment of the bar of the State. The expression of that judgment would be felt by the candidates themselves. A candidate would hesitate to press his claims if it were manifested to him that his professional brethren did not recognize his fitness for the place he sought. Any one who possesses a sense of propriety much more any one who could be called a lawyer, surely any one who could be thought of as a judge, would be apt to yield to the opinion of his professional brethren that somebody else in their judgment was better suited for the place.

If a candidate for any judgeship prefers to stake his chances for success on personal or political influences rather than on the judgment of his professional brethren as to his fitness, he goes far to demonstrate his unfitness for the place, and if he should be chosen it will not take him long to furnish even more convincing proofs.

If we want to strengthen our influence we must believe in our power and manifest it. One way to increase our power is to exercise the power we have.

Let it be known that this Association intends to express itself about the choice of judges, and our position in and out of the profession will become more important. Let the opinion of the Association be gathered, not necessarily that the majority shall speak as if it were the whole Association, but that its opinion fairly ascertained as between candidates may be made known to the voters, the president or the governor.

Would it build up a machine? Possibly. But there are machines now that we do not run, and yet that do not do the work well. It might be well enough for us to constitute a machine which would have to be reckoned with in the selection of judges. Some of us, perhaps a good many of us, would oppose the Association getting into politics even that far, but none of us could oppose it as vigorously as the politician would.

I am not sure that I have convinced myself that we ought to do this, but it is worth while considering whether in declining to take part for or against individuals in connection with the choice of judges, the Bar Association Samson has not shorn itself of its own strength without even the blandishment of any political Delilah.

This far I am sure. That when an unfit person is a candidate for judge, or when any person is urged in an unfit way, and there is any possibility of the success of such a one, the whole power of the Association ought to be brought to bear against him with the appointing or electing power. There ought to be a standing commission of the Association's discreetest men, armed with its authority and qualified to speak for it when it is not in session, ready at every moment to deal with every such case and to defend the interests of the profession and the community against the schemes of the self seeker and the unsavory arts of the politician.

It may be that some men may not want to express themselves against a candidate for judge merely because he may have some prospect of success. If nothing better can be done for any such he might be permitted to vote by secret ballot.

Another thing which has become one of the regular features of the Association's meetings is a plan for maturing causes for trial so as to decrease delay. For at least a dozen years Captain Poundstone has been maturing his views as to the maturing of causes, while the Association doesn't seem to have any view to mature. But that only shows that the Association is old enough to be getting into regular habits, as does the fact that twenty years ago Honorable Joseph Sprigg was delivering an address and ten years ago I was indulging in a retrospect.

Talking of the expediting of the maturing of causes. Some years ago a distinguished member boasted of the progress which had been made in this respect——in the last seventy-five years. It turned out that what he referred to was the institution of rules at which proceedings might be had in causes instead of at term, and he was unable to think of anything else that had been done within three-quarters of a century.

Then there is the plan for hearing the testimony in equity cases in open court. It looks a little as if, in resisting a change like this, we are like laborers who oppose the introduction of labor saving machinery, thinking there may not be enough work to go round if we have to stop taking depositions in the country.

But some good work is to our credit.

The married woman may now acknowledge a deed in the same manner as a man. The Association favored this, if it did not bring it about.

A standing subject for our discussion has been the elevation of the standards of the profession. The long continued efforts of the Association towards requiring higher qualifications for admission to the bar have met with a large measure of success. In thus placing the attainments of the members of the profession upon a higher plane we have done what we could to make the bar

of the future such as shall not be too cowardly or too lazy to do the things which we are leaving undone.

The Association has been instrumental in bringing about a conference between the circuit judges of the State, which bids fair to lead towards uniformity of rules and practice.

We have lent our aid toward increasing the compensation of judges, a measure at once rewarding and inviting that conscientious devotion to duty which hardly without exception has characterized the administration of justice in West Virginia.

Married women have gotten some of the rights which in West Virginia they didn't know they were entitled to, until the Association in an incautious hour and a half let some of them listen to a special reading of a paper on the Rights of Married Women at the Berkeley Springs hotel.

From outward appearances the Association is prosperous. Its list of members is growing, the reports of its secretary are encouraging, the balances in the treasury are comforting. The reports of its proceedings are growing from pamphlets to books. But if the true measure of progress is to be found in the amount of good which the Association has accomplished what have we to show? At the organization of the Association, its founders called it an association for the promotion of good government, setting up as its goal the enactment of wise and wholesome laws, to be honestly and faithfully executed.

More than once this Association has been told that the profession of the law has not kept pace with other professions; that there has been no such improvement in methods, no such betterment of results as has attended the practice of medicine or the science of teaching. Especially has it been pointed out that in recent years great economy and efficiency have been introduced into commercial methods. But the methods and machinery of the law, the practice of which is so closely allied to the business interests of the country, has shown but little change.

That warning seems to have been justified but it does not seem to have done much good.

What are the reasons for it? One of them may be, that in the nature of things the law must do what I am doing now, indulge too much in retrospect. In the nature of things it has its foundation in the past. The methods of administering justice are part of our education, part of our civilization, and cannot be materially changed without affecting the whole body politic.

Another reason embodied in the nature of the subject may be that while the physician, or the teacher, or the business man may largely control his own methods, and may by individual discovery or invention, or improvement the introduction of which needs no one's permission, greatly advance the science to which he is devoted, that is not possible in the case of the individual lawyer. The physician may cure or kill his patient in his own way, but the lawyer's every step is hemmed in by the restraints of precedent, the provisions of the statutes, the objection of his opponents and the rulings of the courts. All lawyers must practice alike. Among them there can be no denominations differing in doctrine, or even in rites and ceremonies, no schools differing in practice. Not only is the general assent of the profession needed for its advancement but the assent of others is necessary. The courts and to a much greater extent the Legislature must be convinced of the desirability of change before it can come. Out of this grows the necessity for concert, for organization, which as well as the general tendency of thought in that direction, has led to the establishment of associations such as this. Hence it is that the lawyer who regards the law as a profession and not as a business, whose ambition is to prevent crime and injustice and waste rather than to punish or even to remedy them, just as the ambition of the enlightened physician is to prevent disease rather than to heal it, must stir and awaken and enlighten and organize their brethren of the bar who through selfishness or sloth are content without improvement.

In the empires of the past there has occasionally appeared a great legislator, imbued with the will and armed with the power, not merely to amend but even create, a system of jurisprudence. In such cases the science of government and the administration of justice from time to time made swift and great strides forward. Such things cannot happen here. Very many men must be satisfied of the need for change before it can come about. No one man, no few men, can now produce such results. They must have the help of the many, and to gain that help organizations such as this are essential.

If in its score of years this Association has no great score of deeds to its credit, it has at least done this: It has extended its own membership and perfected its own organization until now there stands ready to hand for the accomplishment of great results a great engine which needs only an informing will and purpose.

As we meet once a year and confer about these things of moment to the profession and the public, the kindling coals are drawn together, and accumulate their fires until there is heat enough to produce something of use. But in the past the blaze has been fitful. As these embers are drawn apart, each to its daily and accustomed place, they cool and shrink and lose their power. What is needed is some plan for centering and continuing through the year the influence and power of the Association. Its standing committees need more power, more attention, more zeal. Sometimes a new subject is broached although it may be fully discussed, yet the Association with the proverbial caution of the profession hesitates and sends the matter to a committee, perhaps for the purpose of getting rid of it. Whichever is the case, usually nothing is heard of the matter again. When a proposition is discussed in the annual meeting upon such consideration as is then possible its tendency is seen to be right, but the Association is without time or patience then to give it final and perfect shape, it is not well to refer it to a committee for report back to the Association. Such committee feels but little responsibility or even interest. Men ought to have confidence enough in the strength of their judgment to risk its exercise upon the general bearing of a question even if they have not more than two days to think or talk about it. Because it may have taken years to build up their power of judgment is no reason why years should be taken whenever that power is to be exercised. Let the Association pass on the general question and then let the proper standing committee, or if its members be not especially interested in the subject, a special committee for the purpose, be authorized to take the proposition, and upon conference and consideration prepare the necessary measure to be submitted to Legislature or the courts, and there follow it up. There need be no fear that the necessary and usual amount of opposition and criticism will not be forthcoming. Such a method will keep alive interest in the matter and direct attention to it. If such a proposition were one which the Association had the power to put in effect it might not be well to take such a course as this, or to delegate its power to any one, but where the action must be that of the Legislature or the court, and the part of the Association can at most be that of suggestion or argument, there need be no apprehension of danger. All that the Association could do would be to bring the matter to the attention of the body which can act and which finally must mold the form of the action to be taken. So that for the sake of what I believe to be the welfare of the Association and of its efficiency in public influence, I urge that wherever the Association is convinced that amendment ought to be had, although it may not be prepared to specify the details or the final verbiage of the amending statute, it should, after making such progress as it can make upon the subject at its session, refer the matter to a committee with the expectation and understanding and instruction that that committee will carry on the work and will not, as now, permit it to drop, only to be taken up again for a few moments at the next annual meeting of the Association. Make the committee as large and representative as you like. It ought to be fairly representative of the various views of the Association so far as they may have been expressed. Members

of the Association who may not be able to impress its committee with their views can always exert their influence with members of the Legislature personally or by appearing before a committee of that body. The main thing is to keep the subject alive between the meetings of the Association and that can be done only through the powers and efforts of its committees.

Another thing in favor of which the Association has declared has been the adoption of a method of transacting business in the court of appeals by which cases might be taken up for consideration as they are submitted and promptly disposed of. The method recently introduced by the court goes far to meet the expressed wish of the Association and has already demonstrated its usefulness. But consideration of a case by the court begins before and not after the argument by counsel. For the purpose of putting court and counsel into possession of the real case there is nothing like oral argument. This view, which finds its sanction in the precept and practice of the judges of the supreme court of the United States, has heretofore been advocated by the Association and it seems to be growing in the favor of our court of appeals. There is nothing like this to bring out the true question in the case and then bring in the true answer.

"It is this same debate
That overmasters armies; that distils
From rancorous commotion, amity;
It is the proof, sifter and alkahest
Of all opinion, and the ordeal keen
Of knowledge, reason, and intelligence,
The arbiter of rights; the only source,
Camp, castle and estate of liberty.
The sword did never yet perpetuate
The work it reared; too sharp a trowel
Still with bloody mortar building on the sand.
The world alone endures, but prophecy
Being now invalid, we exalt debate."

With our own court inviting oral argument rather than discouraging it, or even being indifferent to it, should come increased satisfaction with the results of the court's labors, and would disappear many of the reasons for holding terms of court at different points in the State.

Has there not been, however, too much today of our shortcomings and overgoings, of our sins of omission and commission, of retrospect in every way?

Cousin said it was far better to have a future than a past.

Shall we not turn our faces in the other direction, toward that mark long since set for us, of the enactment of wise and wholesome laws, to be honestly and faithfully executed. Shall we not set about paying our debts?

Lord Bacon said, "I hold every man a debtor to his profession, from the which as men of course do seek and receive countenance and profit, so ought they of duty to endeavor themselves by way of amends to be a help and an ornament thereto."

Mr. Gladstone said that "Considered as a mental training the profession of the bar is probably in its kind the most perfect and thorough of all professions. No change, practical or speculative, social or political or economic, has any terrors for the profession of the law."

Such being our obligations and such our equipment, we must recognize the public relations our profession sustains to the commonwealth. It is not merely because by this craft we have our wealth that we who minister about the sacred altars of justice may cry, "Great is Diana of the Ephesians!" If we did not know it before last night, we know now that our profession is not a mere bread-winning craft. We are not members of it merely to win cases, nor yet merely to live up to the strictest codes of morals and professional ethics.

Every now and then we see miscarriages of justice under the proper administration of the existing law. In the "wide survey of causes" we must realize the philosophy and the truth of Lord Bacon's saying that "some things must

be done unjustly in order that more things may be done justly." Every such failure of justice under the forms of law first exacts from the true lawyer his tribute to the lawyer's supreme love of law. But then it constrains him to turn and heed the reformer's supreme sense of right. Having seen how justice has been made to yield to law, he owes it to his State, to his profession and to his own moral nature to make sure that that thing shall never happen in that way again. And what instrument lies near his hand, of such adaptability and strength to work his will, as his State Bar Association?

Can we behold with complacency the law as it is, and the methods of its administration as they are? Are the criminal laws of the State enforced steadily, impartially, justly and promptly? Are miscarriages of justice infrequent? Are lynchings unknown? In civil cases is the law doing its part of the world's work, as that work is today? In other departments of that work we have seen methods become more and more precise, scientific, direct, certain, cheap, prompt and efficient. What has been done in that direction in the line of our own work? What has been done to strengthen the popular sense of reverence for law, to which in the last analysis, in the crucial crisis, we must make appeal.

We must feel that when we act for our client in any case we are acting for every man who may have a case, and so for the public, as officers of the law. When we defend an accused person, borne down by the weight of popular sentiment, we see in our profession a bulwark of public liberty. When we discharge our duty to a client knowing that we thereby risk the loss of our professional business or political preferment or cherished friendships; we add, consciously or not, something to the common store of moral greatness. When we argue the great questions which concern our political rights and our constitutional guaranties we are doing what in every other country belongs only to the highest offices of statesmanship.

Some of these thoughts come to me from an address of the President of the Georgia Bar Association, and I cannot close more fitly than with the inspiring words he quoted from a profound thinker and lawyer. Words that seem even more impressive as we contemplate Judge Stafford's noble picture of the ideal lawyer:

"And now, perhaps, I ought to have done. But I know that some spirit of fire will feel that his main question has not been answered. He will ask: 'What is all this to my soul?' You do not bid me sell my birthright for a mess of pottage. What have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?' Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make—I do not say find—his world ideal. Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt—that a man may live greatly in the law as well as elsewhere; that there, as well as elsewhere, his thought may find its unity in an infinite perspective, that there, as well as elsewhere, he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable."

## APPENDIX VII.

### Report Of Committee On Legal Biography.

To the State Bar Association:

Your Committee on Legal Biography submits the following as its report at this meeting:

Some weeks since, the Chairman of your Committee, by letter, requested each member of the Committee to furnish information as to the decease of any member of this Association who may have died since your last meeting.

Replies were received from all the members, except one.

Your Committee does not know of the death of any member of this Association during the year, except that of the late Governor E. Willis Wilson. Mr. Molohan, of Charleston, kindly furnished information from which, as well as from other sources, your Committee has been enabled to prepare and report the following sketch of the life of Gov. Wilson, who passed to the great beyond a few months since:

#### Emmanuel Willis Wilson.

Emmanuel Willis Wilson was born at Harpers Ferry, in the County of Jefferson, in this State, on the 11th. day of August, 1844. He was the third son of James Fitzgerald Wilson, and Maria, his wife, who was Maria Spangler, of Revolutionary stock. Gov. Wilson's father was a son of a sea-faring man, of Scotch descent, who emigrated from Liverpool, England, in the year 1810, and settled in the County of Jefferson, when his son, James Fitzgerald was about eleven years of age. His father grew up in that county and had a contract at the United States Armory, which then existed at Harpers Ferry. He died in the year 1857.

After the death of his father, when Gov. Wilson was a boy, he worked for a short time in the Armory. He received his education in the schools of the county, and afterwards graduated at "Burnhams American Business College at Springfield, Mass."

He was an industrious, studious and ambitious boy, and by his own research, had gathered much information.

After the close of that memorable "War Between the States," during which, Harpers Ferry, the home of our future Governor, was one of its chief theaters, the subject of this sketch, filled with highest ambitions and a determination to make his "mark in life," in the year 1866 entered upon the study of his chosen profession of law, and in the year 1869 was admitted to the Bar. He had gathered much knowledge in matters of science and history, as well as in general literature, and it was said of him that he was "one of the most thoroughly equipped men in the State." He rose rapidly in his profession, and in 1870, was elected by the people of Jefferson County to the Legislature, when, it may be said, that his distinguished political career had its birth.

In the year 1872, he represented his District in the Senate of West Virginia, and in that body, his ability and energy became most conspicuous.

His energetic and successful opposition to a bill for the transfer of the Kanawha River to a corporation, gave him wide spread fame among the people of the State.

On the 27th. of April, 1874, he married Henrietta S. Cotton, the daughter of the then oldest physician of the city of Charleston, and in the month of September of that year, removed to Kanawha County, where his home was until the time of his death.

In the year 1876, the people of Kanawha County elected him as their representative in the Legislature, and again in 1880. At the later session, he became the Speaker of the House, and as Speaker, was distinguished for his knowledge of parliamentary law and his abilitty as a presiding officer.

It was E. Willis Wilson who, in the Legislature, labored so hard and zealously for the protection of the miners and laborers from the evils of the merchandise check system, and to secure inspection and ventilation of the mines in the State.

It was E. Willis Wilson who became the champion of an amended election law and was untiring as a citizen, as a Legislator and afterwards as Governor in his efforts towards the adoption of some measure for the protection of the people in their elections.

It was E. Willis Wilson, who years ago brought and advocated before the Legislature the question of railroad rates, rebates and discriminations, a question which now so deeply moves the people of this country, and has in recent times received such deep thought and extensive consideration, not only in the State, but by the general government.

In the year 1884, he became a candidate for Governor, and after a hard struggle, was nominated by the convention. It was said that the canvass which followed was a remarkable one, and that Gov. Wilson's party "had a remarkable man to conduct it," and that on the hustings, as in the convention which nominated him, he exemplified what was said of him that "all his life he had encountered opposition, and all his life he had triumphed over it."

He fought the battles of life with an energy that never faltered and a courage that never quailed.

As Governor, he felt that he was obeying the Mandate of the Constitution in discharging the duties of the office until a Governor should be declared by the Legislature to be elected.

The Supreme Court of Appeals sustained this view, and its decisions may be found reported in the 32nd. W. Va. Reports, which show why Governor Wilson continued to act as Governor after his term had expired.

Governor Wilson was a lawyer of very great attainments, and possessed a mind of very clear conceptions, honorable in the practice of his profession, untiring in the service of his clients.

He was a firm believer in the Christian religion, and was a member of the Episcopal Church.

Gov. Wilson's life and works made deep imprint upon the history of this State, and the loss, by his death, to the community in which he lived, to the people of his native State, and to his family and friends, was great indeed.

"Peace on the good man's memory; let it grow
Green with years, and blossom through the flight of ages,
Let the Light stream upon his deeds of life,
And in the Book of Fame the glorious record of his virtues write,
And hold it up to men, and bid them claim,
A palm like his, and catch from him the haloed flame."

"God give us such men,—a time like this demands;
Strong minds, great hearts, true faith and ready hands,
Men who possess opinions, and a will,
In public duty and in private thinking."

Respectfully submitted,

ROBERT WHITE,
Chairman.

## APPENDIX VII.

### Report of Committee On Legal Education.

(By St. George T. Brooke, Esq.)

Your Committee on Legal Education has a few suggestions to make by way of supplement to the report which was submitted to this Association at its meeting at Parkersburg, December 1903.

As the law now stands parties who reside in other States may be admitted to practice in the State of their residence and then come immediately into this State permanently to reside and be admitted to practice on mere motion to the court, although they have not practiced in the State of their former residence a single day. Many of the States have lower entrance requirement for admission to the Bar than West Virginia. This puts it in the power of such parties to evade the West Virginia law by being admitted first in their own State, not for the purpose of practicing, therein, but for the purpose of being admitted in West Virginia upon mere motion to the court, and, therefore, without being subjected to the examination which is required of residents of this State and also without the certificate of good moral character from the County Court of the county in West Virginia in which they have resided for one year next preceding their application for admission to membership. In order to admit to practice in West Virginia upon mere motion to the court attorneys from other States who move into West Virginia permanently to reside, it is suggested by your committee that it might be well so to amend the law as to require such attorneys to have been **bona fide** practitioners in the State from which they come for at least three years before they moved into West Virginia. No attorney would be admitted in another State for the purpose of evading West Virginia law if he had to practice in that other State for three years before he could be admitted on mere motion in West Virginia. The Association may recall that when the Supreme Court of this State passed its order in 1898 delegating to a Board of Examiners (consisting of the law faculty of the University) the power to examine candidates for admission to the Bar it instructed the Board to subject the candidates to the same examination in law to which law students of the University who were applicants for the degree of Bachelor of Laws were subjected; but the court made no requirement as to the elementary academic education which should be required as a condition precedent to admission to the law examination. Accordingly it has always been a matter of some question in the Board as to how far they had a right to require academic education, and how much academic education, as a condition precedent to entrance to the bar examination. It should be remembered that at the time the Supreme Court made the order to which we refer there was no law in W. Va. requiring even an elementary English education as a condition precedent to admission to the Bar; and the Supreme Court was entirely silent on the subject of academic education. However in the Catalogue of the University for 1904-'5 the law faculty caused to be inserted the requirement that candidates for examination for admission to the Bar should have at least a "high school education," but the term "high school education" has no fixed meaning and the West Virginia University authorities interpreted it as being higher education than the "twenty-four preparatory courses" which were required by the University for entrance upon the diploma of law course; and the diploma of law is an honor conferred by the University. So we had the anomaly of requiring

higher academic entrance requirements for special students who were only preparing themselves for admission to the bar examination, and were asking no college honor than were required for students who were asking the University honor of diploma in law. The Board of Examiners, therefore, only required the applicants for admission to the bar examination to file with the Board a detailed statement of the time, place and extent of their academic schooling, including the branches of study covered; and if the Board should be in doubt as to the sufficiency of these entrance requirements the applicants will be subjected to a special examination before being admitted to the law examination. Has the Supreme Court given the Board of Examiners the right to make even this requirement? Hon. Lawrence Maxwell, Jr., Chairman of the section of Legal Education of the American Bar Association, said in his address before that Association, at Narragansett Pier, August 23rd, 1905, that "It must be admitted that the law schools, in the training which they are prepared to furnish, are much in advance of the States in the conditions which they impose for admission to the Bar, and that the problems of the schools would be much simplified if the States were to bring up their standards to those of the schools." The Board of Examiners think it probable that they are in favor of higher academic requirements for admission to the bar examination than the conditions of the State would justify and the Board would like to hear from the Bar Association on that point. There is a good deal of difference of opinion as to the amount of preparatory academic education that should be prescribed as an absolute condition precedent to admission to the Bar. The Committee on Legal Education of the American Bar Association in its very interesting report to that Association in 1903, reached the conclusion that two years of a college course was the least that should be required as an adequate preparation for the study of the law but expressed the opinion that it was impracticable to secure the adoption of that standard at the present time. But the Hon. Lawrence Maxwell, Jr., in the address from which we have already quoted, says that there appears to be no good reason for not adopting that standard at once in the law schools of the flourishing State Universities of the West. Judge Danaher of the New York State Board of Examiners, said in his address before the American Bar Association in 1898 that according to his observation the standard of preliminary education which that State had adopted had been productive of wonderful results in elevating the tone of the profession, and that from his experience he would rather abolish examinations in law than dispense with a high standard of general education. Prof. Harry F. Richards, dean of the University of Wisconsin school of law says: "The question of how extensive the general education should be for those who seek admission to the law schools is one of the present problems in legal education. Its solution presents many difficulties, both in the way of a proper theoretical standard as well as the administration of a standard once determined upon. The question no longer takes the form of no standard versus some standard. The overwhelming sentiment of the bar and the public as expressed in resolution and statute is in favor of some requirements in preliminary training for prospective law students. Our task is to determine how extensive this preparation should be. The greatest difficulties are, as usual, practical rather than theoretical. This is well illustrated in the experiences of the Association under whose auspices we are now assembled. In laying down requisites for membership, the rules provide: "It (the law school) shall require of the candidates for a degree the completion of a high school course or its equivalent." If the term "high school" stood for definite attainments, we might regard this rule as fixing at least a fair minimum test for membership of this Association. As a matter of fact the term does not have a definite meaning even in a single jurisdiction." From the address of James Barr Ames, Dean of Harvard Law School, before the American Bar Association in St. Louis, September 1904 we gather the following facts; that twenty-five years ago an examination or certificate of graduation from a high school as a condition of admission to a law school was almost unknown. In 1896, 7 out of 74

schools, i. e. fewer than one-tenth, required as much as the completion of a high school course for admission to the school. In 1904, there are 51 schools, i. e., nearly one-half of all the schools. Truly the reform in the matter of preliminary education has proceeded rapidly in the last eight years. But much remains to be done so long as one-fourth of the law schools requires an entrance examination representing considerably less than a high school course, and another fourth requires no examination at all for admission. Here again one is impressed by the geographical distribution of these three classes of schools. Of schools requiring for admission to candidacy for a degree at least a high school education, only one, the University of Virginia Law School is in the territory south of the latitude of Washington and east of the Mississippi river, and in that same territory we find a majority of the schools requiring no entrance examination. Now that the University of Virginia has led the way, the other Southern schools may be expected to follow.'' But your committee finds that the Catalogue of the University of Virginia for 1903-'4, only ''Earnestly admonishes young gentlemen not to begin their legal studies until they have at least completed an academic course equal to that of a good high school, or, if possible, equal to that ordinarily required for degree of Bachelor of Arts. It is evident that the University of Virginia had the matter of academic education as an entrance requirement to the law school under careful consideration and deliberately rejected all academic requirement whatever. Your Committee has not at hand a Catalogue of that University for 1904-'5. The Board of Examiners of the West Virginia University caused to be inserted in the Catalogue of 1904-'5 the requirement that candidates for admission to the bar examination should have a high school education. Did the Board of Examiners have the right to do so? They determined to test this question at the last September Bar examination. In the year 1904, a gentleman appeared at the West Virginia University to enter the law class to prepare himself for the succeeding Bar examination. He brought to the acting dean of the law school a letter of introduction from an eminent practitioner of law in this State. The letter was exceedingly complimentary to the bearer. One could not read it without concluding that the bearer of the letter was a gentleman whom the writer of the letter considered entirely a proper person to practice law in West Virginia when he should have sufficient knowledge of law to pass the examination in law. It was soon found that the bearer of the letter had almost no education in elementary English. He failed several times on his examinations but tried it again. In the opinion of the chairman of the Board, if the Board of Examiners had any requirement of even elementary English education as a condition to admission to the bar examination here was a case where the candidate ought to be rejected. But in view of the fact that the candidate seemed to be an entirely worthy man and had brought such a very strong letter of introduction and endorsement from an eminent member of the Bar, it was thought a good time to test the opinion of the Supreme Court upon the question whether any English education, and if so, how much was a condition precedent to admission to the Bar of this State. Accordingly the chairman of the Board refused to sign the certificate for admission but wrote on the back of it that he had refused to sign it because the holder had not sufficient English education; but as two members of the Board had signed it the chairman issued it to the party that he might forward it to the Supreme Court to be acted upon in such manner as the court thought proper. The Supreme Court passed upon the sufficiency of the certificate and admitted the party to practice. Now does the Supreme Court require that an applicant to practice law in this State shall have an elementary English education?

It will be observed from the address of James Barr Ames, dean of the law school of Harvard which has been quoted from, that one-fourth of all the law schools in the United States have absolutely no entrance requirements, another fourth have an entrance requirement lower than a high school education. The Board of Examiners, as has been stated, caused to be inserted in the Catalogue

of the West Virginia University, 1904-'5, the announcement that candidates for admission to the Bar should have a high school education as an entrance requirement to the bar examination. Has the Supreme Court authorized the Board of Examiners to have such an entrance requirement? Your committee is informed that the Board of Examiners desires an expression of opinion by this Association upon this question. Not improbably the Supreme Court would not be averse to hearing an expression of opinion by this Association upon the question as to how much academic education should be required of a candidate for admission to the bar examination. Naturally the West Virginia University law school does not wish any entrance requirements which will drive West Virginians out of the State to study law in other schools. The law school of the West Virginia University started in 1878 with one law student; the next year it had increased its attendance 100 per cent; in 1905 it has about 120 students. So long as the University of Virginia and Washington and Lee have absolutely no academic entrance requirements, not only for entrance to the law school, but not even for their degree of Bachelor of Laws, if we make our academic entrance requirements too high we will drive our West Virginia students out of the State to those two time honored institutions. The seeming reluctance of those two famous institutions to raise their academic requirements is an embarrassment to the law school of the West Virginia University. Since the West Virginia University, some five years ago, adopted as an entrance requirement to the Bachelor of Laws degree course, thirty-six courses of high school work plus twenty-two courses of college work, the attendance of West Virginia students at the University of Virginia has increased nearly 400 per cent, and it is believed that the increase in the attendance of West Virginia law students at Washington and Lee, within the same time, has been quite as great.

The Board of examiners believe that they have been subject to much adverse criticism because they have allowed to pass the bar examination young men who "murder the king's English;" but it may be remarked, in the first place, that it is quite possible to write with correctness and yet violate all the rules of grammar in speaking; and, in the second place, it has always been questioned whether the Board of Examiners was given the power by the Supreme Court to fix any academic education as a condition precedent to entrance to the bar examination.

ST. GEORGE T. BROOKE,
Chairman.

# CONSTITUTION AND BY-LAWS

### Constitution.

1. The Association shall be known as "The West Virginia Bar Association."

### Object.

2. The Association is formed to advance the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice; to uphold integrity, honor and courtesy in the legal profession; to encourage liberal education, and to cultivate cordial intercourse among the members of the bar.

### Membership.

3. The members of the legal profession attending this convention this 8th day of July, 1886, are hereby declared to be members of this Association, provided they shall, during this present session, pay the admission fee hereinafter mentioned.

Any member of the legal profession in West Virginia, of good standing, residing therein, may become a member of the Association upon nomination and vote, as hereinafter provided.

### Election Of Members.

4. All nominations for membership shall be made by the Committee on Admissions, and must be transmitted in writing to the President and by him reported to the Association, and the Association shall thereupon vote by ballot. Several nominees may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. One negative vote in every five shall suffice to defeat an election. No member of the bar residing in a county where there is a local Bar Association shall become a member of this Association unless he shall be a member of such local Association.

### Officers.

5. The officers of the Association shall be a President, who shall be ineligible to reelection on the expiration of his term; one Vice-President from each Congressional district represented by membership in the Association; a Secretary and Treasurer. All of these shall be elected at the annual meeting and hold their offices until the next annual meeting of the Association and until their successors are elected. A majority of votes shall be necessary to the election of officers, including the election of the Executive Council. Such election shall be by ballot.

### Committees.

6. At the annual meetings the Association shall elect an Executive Council to be composed of five members and the President and Secretary. The President-elect shall, with the approval of the newly elected Executive Council, appoint the following standing committees, to-wit:

A Committee on Admissions.

A Committee on Judicial Administration and Legal Reform.

A Committee on Legal Education.

A Committee on Grievances.
A Committee on Legal Biography.
A Committee on Legislation.
A Committee on Banquet.

The Committees on Judicial Administration and Legal Reform, on Legal Education, on Legislation, and all other committees appointed to propose matters for Legislative action, or to which such matters may be referred for report, shall, at the expense of the Association, have printed and distributed to members copies of their reports at least ten days before each annual meeting. It shall be deemed a compliance with this requirement if such reports shall have been published in The Bar at least ten days before such annual meeting.

A majority of the members of every committee, including the Executive Council, who may be present at a meeting of the Association, or at a meeting of such committee held in accordance with By-law No. 8, shall constitute a quorum of such committee.

**Final Action.**

7. No action of this Association of a permanent nature or recommending changes in law or the administration of justice, shall be had until the subject matter thereof shall have been reported upon by the appropriate committee to which the same shall have been referred, unless this regulation shall be suspended by a two-thirds vote of the members voting thereon.

**President.**

8. The President, or in his absence the Vice-President, senior in years, shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the annual meeting after his election, which address shall discuss matters of special interest to the people of this State, arising upon legislation enacted and decisions rendered.

**The Executive Council.**

9. This Council shall manage the affairs of the Association, subject to the provisions of the constitution and by-laws, and shall be vested with the title to all its property, as trustees thereof, and shall make by-laws for the Association, subject to amendment by the Association.

**Committee On Admissions.**

10. The proceedings of this committee shall be deemed confidential and shall be kept secret, except so far as written reports of the committee shall be necessarily and officially made to the Association.

**Committee On Judicial Administration and Legal Reform.**

11. It shall be the duty of the Committee on Judicial Administration and Legal Reform to take notice of all proposed changes in the law, and to recommend such as may be in their opinion entitled to the favorable influence of the Association; and, further, to observe the working of the judicial system of the State, to collect information with reference thereto, and to recommend such action as they may deem advisable.

**Committee On Legal Education.**

12. It shall be the duty of the Committee on Legal Education to examine and report upon any proposed changes in the system of legal education and of

admission to the practice of the profession in the state of West Virginia.

**Committee On Grievances.**

13. The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and report the same to the Association with such recommendations as they may deem advisable.

The proceedings of this committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

**Committee On Legal Biography.**

14. The Committee on Legal Biography shall provide for the preservation among the archives of this Association of suitable written or printed memorials of the lives and characters of the deceased members of the West Virginia Bar.

**Secretary.**

15. The Secretary shall keep a record and conduct the correspondence of the Association and perform the usual duties of such office.

**Treasurer.**

16. The Treasure shall collect, and by order of the Executive Council disburse, all funds of the Association, and keep regular accounts, which at all times shall be open to the inspection of any members of the Executive Council.

**Annual Meeting.**

17. This Association shall meet annually at Parkersburg or such other place and at such time as shall be fixed at each session of the Association. Those present at such a meeting shall constitute a quorum.

**Dues.**

18. The fee for admission to membership shall be $5, which shall in all cases accompany the application for membership. The annual dues shall be $4, the payment of which shall entitle each member to receive one copy of the journal and all the regular publications free of charge. The Treasurer shall annually set apart and pay over to the Executive Council one-fourth of the sum collected as annual dues, which shall be used as a fund for paying the expenses of publishing the journal of the Association.

**Amendments.**

19. This constitution may be altered at any annual meeting, on the recommendation of the Executive Council, by a vote of the majority of the members present, or without such recommendation by a vote of two-thirds of the members present.

**Expulsion.**

20. Any member may be expelled by a majority of this Association at any annual meeting.

**Resignations.**

21. Any member may resign at any time upon the payment of all dues for

the current year in which the resignation is tendered; provided, there be no charges for misconduct against such member.

From the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid, as above provided, the person giving such notice shall cease to be a member of the Association.

**Delinquents.**

22. Any member of this Association who has for two successive years failed to pay his annual dues having due notice thereof, shall be dropped from the roll of membership by the Treasurer, and if at the end of one year thereafter he shall still be in default for dues, his membership shall thereby be forfeited; but if he shall within such year pay all his dues, such payment shall restore him to membership. The Treasurer shall report his action under this article to each annual meeting of the Association.

**Nominations.**

23. As early as practicable on the first day of the annual meeting, the President shall appoint a special committee on nominations, consisting of five members, which committee shall promptly meet, receive all nominations which may be offered for any office, for membership in the Executive Council, or for election as delegate to te American Bar Association, and shall report to the Association, not later than the afternoon of the first day, all such nominations, with any others they may see fit to present.

**By-Laws.**

1. The Executive Council, at its first meeting after each annual meeting of the Association, shall select some person to make an address at the next annual meeting, on the life and service of any deceased members of the bench or bar of West Virginia of eminence, or other subjects; and also not exceeding five members of the Association to read papers.

2. The order of business at the annual meeting, unless otherwise provided by the Executive Council or the Association, shall be as follows:

a. Annual Address of the President;
b. Report of Committee on Admissions;
c. Election of members;
d. Appointment of Committee on Nominations;
e. Report of the Secretary;
f. Report of the Treasurer;
g. Report of the Executive Council;
h. Report of the Committee on Nominations;
i. Election of officers, members of Executive Council and delegates to the American Bar Association
j. Selection of time and place of next annual meeting;
k. Report of Committee on Judicial Administration and Legal Reform;
l. Report of Committee on Grievances;
m. Report of Committee on Legal Education;
n. Report of Committee on Legal Biography;
o. Report of Committee on Banquet;
p. Report of special committees, and at the same time a meeting of the newly elected Executive Council;
q. Miscellaneous business;
r. Appointment of standing committees.

The address to be delivered by a person invited by the Executive Council shall be at the evening session of the first day of the annual meeting, unless

the Executive Council shall otherwise provide. After the reading of the President's address and of each paper, an opportunity for discussion shall be given.

The Executive Council shall publish in the journal at least two weeks in advance of each annual meeting a statement of the name of the person who is to deliver the annual address and the names of those who are to read and the subjects of each.

3. No person taking part in a discussion shall speak more than ten minutes at a time nor more than twice on one subject.

A stenographer shall be employed at each annual meeting.

4. At any of the meetings of the Association, members of the bar of any foreign country or of any state other than West Virginia, who are not members of the Association, may be admitted to the privilege of the floor during such meeting.

5. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the report of committees and all proceedings of the annual meetings shall be printed; but no other address made or papers read or presented shall be printed, except by order of the Executive Council. Extra copies of reports, addresses, and papers read before the Association may be printed for the use of their authors, not exceeding one hundred to each of such authors. The Executive Council, as a committee on publication, shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

6. Except as provided by Article 6 of the Constitution or by vote of the Association, the term of office of all officers and of the Executive Council shall begin at the adjournment of the annual meeting at which they were elected; but the term of office of the members of the several committees appointed by the President shall begin immediately upon their appointment.

7. Each committee shall elect its officers, whose term of office shall commence on their election and continue until the appointment of a new committee; and each standing committee shall continue until its successor shall be appointed.

8. All standing committees shall meet on the day preceding each annual meeting at the place where the same is to be held, at such hour as the respective chairmen shall designate.

9. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

10. The Treasurer's report shall be examined and audited annually.

11. No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Association.

**Charges.**

12. Any charges of unprofessional conduct against any member of the Association, if made in writing and signed by the person preferring them shall be investigated by the Committee on Grievances, who shall recommend to the Association such action as they may deem proper, but no action shall be taken by said committee or this Association without due notice to and the service of the charges upon the accused.

**Complaints Against Non-members.**

13. Any complaint against any attorney who is not a member of this Association, shall, if submitted in writing and verified by the affidavit of some credible person, be received and considered by the Committee on Grievances. If such complaint shall appear to be substantially within the provisions of Section 13 of the Constitution, the committee shall, after reasonable notice to the accused, investigate the matter, and recommend to his Association such action as it may deem appropriate.

# CODE OF ETHICS

**ADOPTED BY THE WEST VIRGINIA BAR ASSOCIATION, FEBRUARY 12, 1902.**

The purity and efficiency of judicial administration, which under our system is largely governmental itself, depends as much upon the character, conduct and demeanor of attorneys in their great trust, as upon the fidelity and learning of courts, or the honesty and intelligence of juries.

"There is perhaps no profession after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity, in which so many difficult questions of duty are constantly arising. There are pit-falls and man-traps at every step, and the mere youth at the very outset of his career needs often the prudence of self-denial as well as the moral courage which belong commonly to riper years. High moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction."—Sharswood.

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by the analogy to the duties enjoined by statute and the rules of good neighborhood.

The following General Rules are adopted by the Bar Association of the State of West Virginia for the guidance of its members:

### Duty Of Attorneys To Court and Judicial Officers.

1. The respect enjoined by law for courts and judicial officers is exacted for the sake of the office and not for the individual who administers it. Bad opinion of the incumbent, however well founded, cannot excuse the withholding of the respect due to the office while administering its functions.

2. The properties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been counsel, otherwise than in courts of review, or when the conduct of the judge is necessarily involved in determining his removal from or continuance in office.

3. Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not otherwise be extended, subject both judge and attorney to misconstruction, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due to the judge's station, is the only just foundation for cordial, personal and official relations between Bench and Bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his

moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or reading a repealed statute as in existence; knowingly misstating the contents of a paper, the testimony of a witness, or the language or arguments of the opposite counsel; offering evidence which it is known the court must reject as illegal, to get it before the jury under the guise of arguing its admissibility, and all kindred practices, are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening arguments positions intended finally to be relied on, in order that the opposite counsel may not discuss them, is unprofessional.

In the argument of demurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side bar" remarks and sparring discourse to influence the jury or bystanders. Personal colloquies between counsel tend to delay and promote unseemly wrangling, and ought to be discouraged.

6. Attorneys owe it to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7. One side must always lose the cause, and it is not wise or respectful to the court for attorneys to display temper because of an adverse ruling.

**Duties Of Attorneys To Each Other, To Clients and To the Public.**

8. An attorney should strive at all times to uphold the honor, maintain the dignity and promote the usefulness of the profession, for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other, and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.

9. An attorney should not speak slightly or disparagingly of his profession, or pander in any way to the popular prejudices against it; and should scrupulously refrain at all times and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him save by the rules of law legally applied. No sacrifice or peril, even to loss of life itself, can absolve from the fearless discharge of his duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to his Creator, or lessen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand, violation of law or any manner of fraud or chicanery for the client's sake.

11. Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12. An attorney appearing or continuing as private counsel in the prose-

cution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a **nolle prosequi**, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. An attorney cannot reject the defense of a person accused of a criminal offense because he knows or believes him guilty. It is his duty by all fair and lawful means to present such defenses as the law of the land permits, to the end that no one may be deprived of his life or liberty but by due process of law.

14. An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harrass or injure the opposite party, or to work oppression and wrong.

15. It is a bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. Newspaper advertisements, circulars and business cards, tendering professional services to the general public, are proper, but special solicitation of particular individuals to become clients is disreputable. Indirect advertisements for business, by furnishing or inspiring editorials or press notices regarding causes in which the attorney takes part, the manner in which they were conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation is of evil tendency and wholly unprofessional.

17. Newspaper publications by an attorney as to the merits of pending or anticipated litigation call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications, and when proper it is unprofessional to make them anonymously.

18. When an attorney is witness for his client, except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client as to any matter.

19. Assertions, sometimes made by counsel in argument, of a personal belief of the client's innocence or the justice of his cause, are to be discouraged.

20. It is indecent to hunt up defects in titles, and the like, and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust make it an attorney's duty, it is unprofessional to volunteer advice to bring a law suit. Stirring up strife and litigation is forbidden by law and disreputable in morals.

21. Communications and confidence between clients and attorneys are the property and secrets of the client, and cannot be divulged except at his instance; even the death of his client does not absolve the attorney from his obligation of secrecy.

22. The duty not to divulge the secrets of clients extends further than mere silence by the attorney and forbids accepting retainers or employment afterwards from others involving the client's interest in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material in a subsequent suit, as a basis of any judgment which may injuriously affect his rights, the attorney can not appear in such cause without the consent of his former client.

23. An attorney can never attack an instrument or paper drawn by him for an infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere scrivener, and was not consulted as to the facts, and, unknown to him, the

transaction amounted to a violation of the law, he may assail it on that ground, in suits between third persons or between parties to the instrument and strangers.

24. An attorney, openly and in his true character, may render purely professional services before committees regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason or understanding, to influence action.

25. An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all concerned, with full knowledge of the facts. Even then such opposition is embarrassing and ought to be avoided. An attorney represents conflicting interests, within the meaning of the rule, when it is his duty, in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26. "It is not desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and vilified."

27. An attorney is under no obligation to minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client can not be made the keeper of an attorney's conscience in professional matters. He can not demand as of right that his attorney shall abuse the oposite party, or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice, and therefore justifiable.

28. Clients, and not their attorneys, are the litigants, and whatever may be the ill feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29. In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history or mental physical peculiarities or idiosyncrasies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories and the like, the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on, the attorney should retire from the cause.

31. The miscarriage to which justice is subject and the uncertainty of predicting results admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

32. Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

33. An attorney is in honor bound to disclose to the client at the time of retainer all the circumstances of his relation to the parties, or interest or connection with the controversy which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his

# ROLL OF MEMBERS

Addleman, R. M. ..... Wheeling.
Alderson, Charles M. ..... Charleston.
Alderson, J. D. ..... Summersville.
Alexander, G. M. ..... Fairmont.
Allen, G. R. C ..... Wheeling
Allen, W. S. ..... Parkersburg.
Allison, B. S. ..... Wheeling.
Altizer, R. G. ..... Clarksburg.
Ambler, B. M. ..... Parkersburg
Ambler, Mason G. ..... Parkersburg.
Anderson, H. M. ..... Charleston.
Anderson, L. C. ..... Welch.
Arbenz, John P. ..... Wheeling
Arnett, U. N., Jr. ..... Fairmont.
Ashby, W. L. ..... Charleston.
Atkinson, Geo. W. ..... Washington, D. C.
Avis, S. B. ..... Charleston.

Bailey, Benjamin F. ..... Grafton
Baker, George C. ..... Morgantown.
Baker, R. M. ..... Huntington.
Barron, J. F. ..... St. Marys
Bassel, John ..... Clarksburg
Bayer, Harry W. ..... Berkeley Springs.
Bennett, J. B. ..... Weston.
Bennett, W. G. ..... Weston.
Black, V. L. ..... Charleston.
Blackmarr, F. L. ..... Sistersville.
Blair, J. V. ..... West Union.
Bland, Robert L. ..... Weston.
Blizzard, Reese ..... Parkersburg.
Blue, Fred O. ..... Philippi.
Bowers, Basil T. ..... New Martinsville.
Bowers, E. A. ..... Elkins.
Boyd, George E. ..... Wheeling
Brannon, W. W. ..... Weston.
Brannon, Linn ..... Weston.
Briggs, Murray ..... Charleston.
Brooke, St. George T. ..... Morgantown.
Broun, Thomas L. ..... Charleston.
Brown, C. L. ..... Ravenswood.
Brown, Forest W. ..... Charles Town.
Brown, J. F. ..... Charleston.
Brown, T. A. ..... Elizabeth.
Brown, William G. Jr. ..... Kingwood.
Brown, W. R. ..... West Union.
Bullock, T. O. ..... Parkersburg.
Bunting, J. G. ..... Weston.
Burdette, A. W. ..... Grafton.
Burdette, S. C. ..... Charleston.
Buster, H. B. ..... Charleston.
Butcher, B. L. ..... Fairmont.
Byrer, Harry H. ..... Philippi.

Caldwell, Alfred ..... Wheeling.
Caldwell, George B. ..... Wheeling.
Caldwell, William G. ..... Wheeling.
Camden, H. P. ..... Parkersburg.
Campbell, A. N. ..... Union.
Campbell, C. W. ..... Huntington.
Campbell, John A. ..... New Cumberland.
Carrigan, Charles E. ..... Moundsville.
Cato, H. S. ..... Charleston.
Chambers, O. J. ..... Spencer.
Chase, George P. ..... Parkersburg.
Chilton, W. E. ..... Charleston.
Clark, F. W. ..... New Martinsville.
Clarke, A. J. ..... Wheeling
Clay, Buckner ..... Charleston.
Clayton, W. C. ..... Keyser.
Conley, W. G. ..... Kingwood.
Conoway, Waitman H. ..... Fairmont.
Coniff, John J. ..... Wheeling.
Cooper, John T. ..... Parkersburg.
Cornett, T. H. ..... New Martinsville.
Cornwell, John J. ..... Romney.
Cornwell, W. B. ..... Fairmont.
Cox, Frank C. ..... Wheeling.
Cox, Frank ..... Morgantown.
Cramer, C. W. ..... Morgantown.
Crile, L. C. ..... Clarksburg.
Crogan, P. J. ..... Kingwood.
Cunningham, A. M. ..... Davis.
Cutwright, W. B. ..... Buckhannon.

Dailey, Benjamin, ..... Moorefield.
Dailey, C. Wood ..... Elkins.
Dailey, Robert W. ..... Romney.
Daly, A. D. ..... Hinton.
Davenport, H. B. ..... Clay.
Davis, John J. ..... Clarksburg.
Davis, John W. ..... Clarksburg.
Dawson, W. M. O. ..... Charleston.
Dayton, A. G. ..... Philippi.
Dent, M. H. ..... Grafton.
Dent, W. R. D. ..... Grafton.
Deshields, H. C. ..... Fairmont.
Dice, Charles S. ..... Lewisburg.
Dillon, C. W. ..... Fayetteville.
Doolittle, Edward S. ..... Huntington.
Dorr, C. P. ..... Webster Springs.
Douglass, R. S. ..... Clarksburg.
Dovener, B. B. ..... Wheeling.
Drane, Henry K. ..... Piedmont.
Dunlap, R. F. ..... Hinton.

Edmiston, Andrew ..... Weston.
Enslow, F. B. ..... Huntington.
Evans, D. B. ..... Moundsville.
Ewing, James W. ..... Wheeling.

Faulkner, Charles J. ..... Martinsburg (Washington, D. C.)

Faulkner, E. Boyd ..... Martinsburg.
Fickeison, A. G. ..... Wheeling.
Fisher, Jake ..... Sutton.
Fitzpatrick, Herbert ..... Huntington.
Fleming. A. B. ..... Fairmont.
Fleming A. S. ..... Fairmont.
Fleming, G. M. ..... Buckhannon.
Fleming, R. F. ..... Fairmont.
Flick, C. P. ..... Wheeling.
Flournoy, R. P. ..... Charleston.
Fortney, Neil J. ..... Kingwood.
Frazer, James C. ..... Morgantown.
Freer, Romeo H. ..... Harrisville.

Gaines, J. H. ..... Charleston.
Garvin, T. M. ..... Wheeling.
George, W. T. ..... Philippi.
Gibson, Braxton D. ..... Charles Town.
Gilchrist, George R. E. ..... Wheeling.
Gilkeson, H. B. ..... Romney.
Glasscock, S. F. ..... Morgantown.
Glasscock, W. E. ..... Morgantown.
Goodykoontz, Wells ..... Williamson.
Gore, C. W. ..... Clarksburg.
Greene, S. S. ..... Charleston.

Hall, Grant P. ..... Charleston.
Hall, S. B. ..... New Martinsville.
Hall, William Mc G. ..... New Martinsville.
Hamill, James L. ..... Columbus, O.
Hamilton, A. W. ..... Fayetteville.
Hamilton, J. M. ..... Grantsville.
Hardman, O. W. O. ..... Middlebourne.
Harmer, Harvey W. ..... Clarksburg.
Hartley, E. F. ..... Fairmont.
Haymond, William E. ..... Sutton.
Haymond, W. S. ..... Fairmont.
Hearn, William H. ..... Wheeling.
Henshaw, John ..... Fairmont.
Henritze, T. L. ..... Welch.
Hervey, Henry C. ..... Wellsburg.
Higginbotham, C. C. ..... Buckhannon.
Hodges, M. S. ..... Franklin.
Hoff, S. M. ..... Harrisville.
Hoffheimer, George N. ..... Clarksburg.
Hoge, Patrick M. ..... Fairmont.
Hogg, Charles Edgar ..... Point Pleasant.
Hoke, J. T. ..... Windsor, Nova Scotia.
Halsberry, Leroy C. ..... Philippi.
Holt, J. Howard ..... Moundsville.
Hooton, A. L. ..... Moundsville.
Hoover, John M. ..... Webster Springs.
Horan, A. J. ..... Summersville.
Horan, T. B. ..... Summersville.
Horan, T. O. ..... Clay.
Houston H. T. ..... Clarksburg.
Howard, John A. ..... Wheeling.
Hubbard, Nelson C. ..... Wheeling.

Hubbard, William P. ..... Wheeling.
Hubbard, Robert T., Jr. ..... Fayetteville.
Hughes, W. W. ..... Welch.
Hunt, A. B. ..... Roanoke, Va.

Ice, W. T., Jr. ..... Philippi.
Ireland, A. D. ..... Parkersburg.
Isbell, L. D. ..... Huntington.

Jackson, Malcolm ..... Charleston.
Jackson, W. W. ..... Parkersburg.
Jacobs, Thomas P. ..... New Martinsville.
Jeffords, Tracy L. ..... (Washington, D. C.) Harper's Ferry.
Johnson, Charles B. ..... Clarksburg.
Johnson, Clyde B. ..... St. Marys.
Johnson, George W. ..... Parkersburg.
Jordan, Ivory C. ..... Charleston.

Keller, B. F. ..... Bramwell.
Kendall, U. S. ..... Fairmont.
Kilmer, W. C. ..... Martinsburg.
Kirby, J. P. ..... Fairmont.
Knight, E. W. ..... Charleston.
Koontz, Ben. D. ..... Fayetteville.
Kreps, C. A. ..... Parkersburg.
Kunst, G. H. A. ..... Grafton.

La Follette, L. M. ..... Charleston.
Laird, John F. ..... Parkersburg.
Law, James E. ..... Clarksburg
Lazelle, I. G. ..... Morgantown.
Leftwich, F. C. ..... Madison.
Lehman, A. L. ..... Fairmont.
Lehman, John L. ..... Fairmont.
Leonard, Dan B. ..... Parkersburg.
Lindsay, Ward B. ..... Martinsburg.
Linn, R. G. ..... Charleston.
Lively, Leo ..... Charleston.
Loeb, Leo ..... Charleston.
Logan, J. D. ..... Union.
Lowe, Scott C. ..... Fairmont.
Lynch, C. W. ..... Clarksburg.

Mann, W. C. ..... Moundsville.
Marshall, O. S. ..... New Cumberland.
Martin, Clarence E. ..... Martinsburg.
Martin, F. T. ..... Fairmont.
Mathews, D. E. ..... Huntington.
Mathews, Daniel ..... Charleston.
Mathews, William B. ..... Charleston.
Mathews, W. G. ..... Charleston.
Maxey, Edwin ..... Morgantown.
Maxwell, Haymond ..... Clarksburg.
May, Clark W. ..... Hamlin.
Meighen, B. F. ..... Moundsville.
Melvin, Thayer ..... Wheeling.
Meredith, J. A. ..... Fairmont
Meredith, W. S. ..... Fairmont.

Merrick, C. D. ..... Parkersburg.
Meyer, W. C. ..... Wheeling.
Miller, James H. ..... Hinton.
Miller, W. N. ..... Parkersburg.
Moats, Frank P. ..... Parkersburg.
Mollohan, W. ..... Charleston.
Monroe, R. W. ..... Kingwood.
Moore, Sheridan ..... Wheeling.
Moreland, Joseph ..... Morgantown.
Morgan, E. F. ..... Fairmont.
Morris, C. E. ..... Wheeling.
Morris, Presley W. ..... Parkersburg.
Morris, Tusca ..... Fairmont.
Morton, E. H. ..... Webster Springs.
Moss, Hunter H., Jr. ..... Parkersburg.
Murphy, C. M. ..... Philippi.
MacDonald, William ..... Keyser.
McCamic, Charles ..... Moundsville.
McCauley, G. W. ..... Moorefield.
McClintic, G. W. ..... Charleston.
McClintic, L. M. ..... Marlington.
McCluer, James S. ..... Parkersburg.
McCrum, A. Bliss ..... Kingwood.
McDonald, Angus W. ..... Charles Town.
McGraw, John T. ..... Grafton.
McIntire, Aloysius C. ..... Berkeley Springs.
McMahon, Frank A. ..... Wheeling.
McMahon, Richard R. ..... Harper's Ferry.
McPeak, E. M. ..... Fayetteville.
McRa, Duncan ..... Charleston.
McWhorter, H. C. ..... Charleston.
McWhorter, J. C. ..... Buckhannon.
McWhorter, J. M. ..... Lewisburg.

Nadenbousch, A. C. ..... Martinsburg.
Naylor, Joseph R. ..... Wheeling.
Neely, M. M. ..... Fairmont.
Nesbitt, Frank W. ..... Wheeling
Noll, Allen B. ..... Martinsburg
Northcott, Elliott ..... Huntington.
Nuckolls, E. L. ..... Fayetteville.

Ogden, M. W. ..... Fairmont.
Osenton, Charles W. ..... Fayetteville.

Palmer, John C., Jr. ..... Wellsburg.
Parks, T. N. ..... Fairmont.
Patton, A. G. ..... Parkersburg.
Payne, W. Dallas ..... Charleston.
Peck, Melville ..... Philippi
Pendleton, Walter ..... Spencer.
Peterkin, William G. ..... Parkersburg.
Pifer, Felix C. ..... Buckhannon.
Poffenbarger, George C. ..... Point Pleasant.
Poole, X. ..... Martinsburg.
Post, Melville D. ..... Grafton.
Poteet, L. E. ..... Fayetteville.
Poundstone, A. M. ..... Buckhannon.

Powell, Charles ..... Fairmont.
Preston, A. D. ..... Beckley.
Preston, John A. ..... Lewisburg.
Price, Andrew ..... Marlington.
Price, George E. ..... Charleston.
Prickett, N. C. ..... Ravenswood.

Quarrier, R. A. ..... Charleston.

Ramage, B. F. ..... Fairmont.
Reay, D. C. ..... Morgantown.
Reed, T. N. ..... Hinton.
Reger, Roy ..... Buckhannon.
Reymann, Lawrence A. ..... Wheeling.
Reynolds, F. W. ..... Keyser.
Richards, H. C. ..... Wheeling.
Riley, T. S. ..... Wheeling.
Ritz, H. A. ..... Bluefield.
Robinson, E. L. ..... New Martinsville.
Robinson, Ira E. ..... Grafton.
Rucker, H. Scott ..... Marlington.
Rucker, E. P. ..... Welch.
Russell, Henry M. ..... Wheeling.

Sanders, J. M. ..... Bluefield.
Sawtelle, A. L. ..... Wheeling.
Scherr, Harry ..... Williamson.
Scott, W. ..... Clarksburg.
Shaver, C. L. ..... Fairmont.
Shaw, Harry ..... Fairmont.
Sheppard, J. A. ..... Williamson.
Shirley, George P. ..... Parsons.
Showacre, Charles A. ..... Moundsville.
Showalter, E. M. ..... Fairmont.
Showalter, H. C. ..... Harrisville.
Shrewsbury, G. H. ..... Charleston.
Simms, H. C. ..... Huntington.
Simpson, J. Coleman ..... Moundsville.
Smith, Charles A. ..... Parkersburg.
Smith, E. G. ..... Clarksburg.
Smith, Harvey F. ..... Clarksburg.
Smith, Levin ..... Parkersburg.
Smith, S. G. ..... Wheeling.
Smith, W. W. ..... Morgantown.
Snider, Millard F. ..... Clarksburg.
Sommerville, J. B. ..... Wheeling.
Spencer, J. S. ..... Point Pleasant.
Sperry, M. G. ..... Clarksburg.
Sperry, Clarence B. ..... Clarksburg.
Spilman, R. S. ..... Charleston.
Stanley, Amos O. ..... Fairmont.
Staples, Waller R. ..... Roanoke, Va.
Stewart, Edgar B. ..... Morgantown.
Stewart, Terrence D. ..... Morgantown.
Stifel, L. F. ..... Wheeling.
Stiles, M. F. ..... Charleston.
Stokes, S. D. ..... Williamson.
Stokes, W. H. ..... Welch.

Stout, W. Frank ..... Clarksburg.
Strader, J. F. ..... Beverly
Straus, W. M. ..... Parkersburg.
Strickling, James H. ..... Sistersville.
Strieby, C. O. ..... Davis.
Swint, Charles P. ..... Weston.

Talbott, E. D. ..... Elins.
Taylor, Blaine W. ..... Elkins.
Taylor, LeRoy ..... Mannington.
Teter, C. F. ..... Philippi
Thompson, W. R. ..... Huntington.
Thurmond, H. C. ..... Webster Springs.
Turner, Smith D. ..... Parkersburg

Valantine, A. J. ..... Parsons.
Vandale, J. A. A. ..... Spencer.
Vandervort, J. W. ..... Parkersburg.
Van Sickle, H. L. ..... Lewisburg.
Van Winkle, W. W. ..... Parkersburg.
Vincent, G. A. ..... Fairmont.
Vinson, Z. T. ..... Huntington.

Walker, Stewart W. ..... Martinsburg.
Wallace, George S. ..... Huntington.
Wamsley, Jared L. ..... Elkins.
Watts, C. C. ..... Charleston.
Watts, R. A. ..... Fairmont.
Wehrle, John ..... Charleston.
Wells, Ross ..... St. Marys.
Westenhaver, D. C. ..... Cleveland, O.
White, J. B. ..... Charleston.
White, Kemble ..... Fairmont.
White, Robert ..... Wheeling.
Whitten, John L. ..... Point Pleasant.
Willey, W. P. ..... Morgantown.
Williams, Homer W. ..... Clarksburg.
Williams, L. J. ..... Lewisburg.
Willis, M. H. ..... West Union.
Wilson. W. G. ..... Elkins.
Wingerter, Ferdinand ..... Wheeling.
Wolfe, W. H., Jr. ..... Parkersburg.
Woodell, W. L. ..... Webster Springs.
Woods, H. B. ..... Harrisville.
Woods, J. Hop ..... Philippi.
Woods, J. M. ..... Martinsburg.
Woods, Samuel V. ..... Philippi.

Yeager, L. A. ..... Morgantown.
Yoke, F. R. ..... Morgantown.
Young, U. G. ..... Buckhannon.

## LIST OF MEMBERS BY COUNTIES.

**Barbour County.**

| | |
|---|---|
| Blue, Fred O. | Philippi. |
| Byrer. Harry H. | Philippi. |
| Dayton, A. G. | Philippi. |
| George, W. T. | Philippi. |
| Holdsberry, Leroy C. | Philippi. |
| Ice, W. T., Jr. | Philippi. |
| Murphy, C. M. | Philippi. |
| Peck, Melville | Philippi. |
| Teter, C. F. | Philippi. |
| Woods, J. Hop | Philippi. |
| Woods, Samuel V. | Philippi. |

**Berkeley County.**

| | | |
|---|---|---|
| Faulkner, Charles J. | (Washington, D. C.,) | Martinsburg. |
| Faulkner, E. Boyd | | Martinsburg. |
| Kilmer, W. C. | | Martinsburg. |
| Lindsay, Ward B. | | Martinsburg. |
| Martin, Clarence E. | | Martinsburg. |
| Nadenbousch, A. C. | | Martinsburg. |
| Noll, Allen B. | | Martinsburg. |
| Poole, X. | | Martinsburg. |
| Walker, Stewart W. | | Martinsburg. |
| Woods, J. M. | | Martinsburg. |

**Boone County**

| | |
|---|---|
| Leftwich, F. C. | Madison. |

**Braxton County.**

| | |
|---|---|
| Fisher, Jake | Sutton. |
| Haymond, William E. | Sutton. |

**Brooke County.**

| | |
|---|---|
| Hervey, Henry C. | Wellsburg. |
| Palmer, John C., Jr. | Wellsburg. |

**Cabell County.**

| | |
|---|---|
| Baker, R. M. | Huntington. |
| Campbell, C. W. | Huntington. |
| Doolittle, Edward S. | Huntington. |
| Enslow, F. B. | Huntington. |
| Fitzpatrick, Herbert | Huntington. |
| Isbell, L. D. | Huntington. |
| Mathews, D. E. | Huntington. |
| Northcott, Elliott | Huntington. |
| Simms, H. C. | Huntington. |
| Thompson, W. B. | Huntington. |
| Vinson, Z. T. | Huntington. |
| Wallace, George S. | Huntington. |

**Calhoun County.**

| | |
|---|---|
| Hamilton, J. M. | Grantsville. |

**Clay County.**

Davenport, H. B. ..... Clay.
Horan, T. O. ..... Clay.

**Doddridge County.**

Blair, J. V. ..... West Union.
Brown, W. R. ..... West Union.
Willis, M. H. ..... West Union.

**Fayette County.**

Dillon, C. W. ..... Fayetteville.
Hamilton, A. W. ..... Fayetteville.
Hubbard, Robert T., Jr. ..... Fayetteville.
Koontz, B. D. ..... Fayetteville.
McPeak, E. M. ..... Fayetteville.
Nuckolls, E. L. ..... Fayetteville.
Osenton, Charles W. ..... Fayetteville.
Poteet, L. E. ..... Fayetteville.

**Greenbrier County.**

Dice, Charles S. ..... Lewisburg.
McWhorter, J. M. ..... Lewisburg.
Preston, John A. ..... Lewisburg.
Van Sickle, H. L. ..... Lewisburg.
Williams, L. J. ..... Lewisburg.

**Hampshire County.**

Cornwell, John J. ..... Romney.
Dailey, R. W. ..... Romney.
Gilkeson, H. B. ..... Romney.

**Hancock County.**

Campbell, John A. ..... New Cumberland.
Marshall, O. S. ..... New Cumberland.

**Hardy County.**

Dailey, Benjamin ..... Moorefield.
McCauley, G. W. ..... Moorefield.

**Harrison County.**

Altizer, R. G. ..... Clarksburg.
Bassel, John ..... Clarksburg.
Criles, L. C. ..... Clarksburg.
Davis, John J. ..... Clarksburg.
Davis, John W. ..... Clarksburg.
Douglass, R. S. ..... Clarksburg.
Gore, C. W. ..... Clarksburg.
Harmer, Harvey W. ..... Clarksburg.
Hoffheimer, George N. ..... Clarksburg.
Houston, H. T. ..... Clarksburg.
Johnson, Charles B. ..... Clarksburg.
Law, James E. ..... Clarksburg.
Lynch, C. W. ..... Clarksburg.
Maxwell, Haymond ..... Clarksburg.
Scott, W. ..... Clarksburg.

| | |
|---|---|
| Smith, E. G. | Clarksburg. |
| Smith, Harvey F. | Clarksburg. |
| Snider, Millard F. | Clarksburg. |
| Sperry, Clarence B. | Clarksburg. |
| Sperry, M. G. | Clarksburg. |
| Stout, W. Frank | Clarksburg. |
| Williams, Homer W. | Clarksburg. |

**Jefferson County.**

| | | |
|---|---|---|
| Brown, Forest W. | | Charles Town. |
| Gibson, Braxton D. | | Charles Town. |
| Jeffords, Tracy L. | (Washington, D. C.) | Harper's Ferry. |
| McDonald, Angus W. | | Charles Town. |
| McMahon, Richard R. | | Harper's Ferry. |

**Jackson County.**

| | |
|---|---|
| Brown. C. L. | Ravenswood. |
| Prickett, N. C. | Ravenswood. |

**Kanawha County.**

| | |
|---|---|
| Alderson, Charles M. | Charleston. |
| Anderson, H. M. | Charleston. |
| Ashby, W. L. | Charleston. |
| Avis, S. B. | Charleston. |
| Black, V. L. | Charleston. |
| Briggs, Murray | Charleston. |
| Broun, Thomas L. | Charleston. |
| Brown, James F. | Charleston. |
| Burdette, S. C. | Charleston. |
| Buster, H. B. | Charleston. |
| Cato, H. S. | Charleston. |
| Chilton, W. E. | Charleston. |
| Clay, Buckner | Charleston. |
| Dawson, W. M. O. | Charleston. |
| Flournoy, R. P. | Charleston. |
| Gaines, J. H. | Charleston. |
| Green, S. S. | Charleston. |
| Hall, Grant P. | Charleston. |
| Jackson, Malcolm | Charleston. |
| Jordan, Ivory C. | Charleston. |
| Knight, E. W. | Charleston. |
| La Follette, L. M. | Charleston. |
| Linn, R. G. | Charleston. |
| Loeb, Leo | Charleston. |
| Mathews, Daniel | Charleston. |
| Mathews, William B. | Charleston. |
| Mathews, W. G. | Charleston. |
| Mollohan, W. | Charleston. |
| McClintic, George W. | Charleston. |
| McDonald, Angus W. | Charleston. |
| McRa, Duncan | Charleston. |
| McWhorter, H. C. | Charleston. |
| Payne, W. Dallas | Charleston. |
| Price, George E. | Charleston. |
| Quarrier, R. A. | Charleston. |
| Shrewsbury, G. H. | Charleston. |
| Spilman, R. S. | Charleston. |
| Stiles, M. F. | Charleston. |

| | |
|---|---|
| Watts, C. C. | Charleston. |
| Wehrle, John | Charleston. |
| White, J. B. | Charleston. |

**Lewis County.**

| | |
|---|---|
| Bennett, J. B. | Weston. |
| Bennett, W. G. | Weston. |
| Bland, Robert L. | Weston. |
| Brannon, Linn | Weston. |
| Brannon, W. W. | Weston. |
| Bunting, J. G. | Weston. |
| Edmiston, Andrew | Weston. |
| Swint, Charles P. | Weston. |

**Lincoln County.**

| | |
|---|---|
| May, Clark W. | Hamlin. |

**Marion County.**

| | |
|---|---|
| Alexander, G. M. | Fairmont |
| Arnett. U. N. Jr. | Fairmont |
| Butcher, B. L. | Fairmont |
| Conaway, Waitman H. | Fairmont |
| Cornwell, W. B. | Fairmont. |
| Deshields, H. C. | Fairmont. |
| Fleming, A. B. | Fairmont. |
| Fleming, A. S. | Fairmont. |
| Fleming, R. F. | Fairmont. |
| Hartley, E. F. | Fairmont. |
| Haymond, W. S. | Fairmont. |
| Henshaw, John | Fairmont. |
| Hoge, Patrick M. | Fairmont. |
| Kendall, U. S. | Fairmont. |
| Kirby, J. P. | Fairmont. |
| Lehman, A. L. | Fairmont. |
| Lehman, John L. | Fairmont. |
| Lively, H. S. | Fairmont. |
| Lowe, Scott C. | Fairmont. |
| Martin, F. T. | Fairmont. |
| Mason, John W. | Fairmont. |
| Meredith, J. A. | Fairmont |
| Meredith, W. S. | Fairmont. |
| Morgan, E. F. | Fairmont. |
| Morris, Tusca | Fairmont. |
| Neely, M. M. | Fairmont. |
| Ogden, M. W. | Fairmont. |
| Parks, T. N. | Fairmont. |
| Powell, Charles | Fairmont. |
| Ramage, B. F. | Fairmont. |
| Shaver, C. L. | Fairmont. |
| Shaw, Harry | Fairmont. |
| Showalter, E. M. | Fairmont. |
| Stanley, Amos O. | Fairmont |
| Taylor, Le Roy | Mannington. |
| Vincent, G. A. | Fairmont. |
| Watts, R. A. | Fairmont. |
| White, Kemble | Fairmont. |

**Marshall County.**

Carrigan, Charles E. ..... Moundsville
Evans, D. B. ..... Moundsville.
Holt, J. Howard ..... Moundsville.
Hooton, A. L. ..... Moundsville.
Mann, W. C. ..... Moundsville.
Meighen. B. F. ..... Moundsville.
McCamic, Charles ..... Moundsville.
Showacre, Charles A. ..... Moundsville.
Simpson, J. Coleman ..... Moundsville.

**Mason County.**

Hogg, Charles E. ..... Point Pleasant.
Poffenbarger, George C. ..... Point Pleasant.
Spencer, J. S. ..... Point Pleasant.
Whitten, John L. ..... Point Pleasant.

**Mercer County.**

Keller, B. F. ..... Bramwell.
Ritz, H. A. ..... Bluefield.
Sanders. J. M. ..... Bluefield.

**Mineral County.**

Clayton, W. C. ..... Keyser
Drane, Henry K. ..... Piedmont.
MacDonald, William ..... Keyser.
Reynolds, F. M. ..... Keyser.

**Mingo County.**

Goodykoontz, Wells ..... Williamson.
Scherr, Harry ..... Williamson.
Sheppard, J. A. ..... Williamson.
Stokes, S. D. ..... Williamson.

**Monongalia County.**

Baker, George C. ..... Morgantown.
Brooke, St. George T. ..... Morgantown.
Cox, Frank ..... Morgantown.
Cramer, C. W. ..... Morgantown.
Frazer, James C. ..... Morgantown.
Glasscock, S. F. ..... Morgantown.
Glasscock, William E. ..... Morgantown.
Lazelle, I. G. ..... Morgantown.
Maxey, Edwin ..... Morgantown.
Moreland, Joseph. ..... Morgantown.
Reay, D. C. ..... Morgantown.
Smith, W. W. ..... Morgantown.
Stewart, Edgar B. ..... Morgantown.
Stewart, Terrence D. ..... Morgantown.
Willey, W. P. ..... Morgantown.
Yeager, L. A. ..... Morgantown.
Yoke, F. R. ..... Morgantown.

**Monroe County.**

Campbell, A. N. ..... Union.
Logan, J. D. ..... Union.

**Morgan County.**

Boyer, Harry W. ..... Berkeley Springs.
McIntire, Aloysius C. ..... Berkeley Springs.

**McDowell County.**

Anderson, L. C. ..... Welch.
Henritze, T. L. ..... Welch.
Hughes, W. W. ..... Welch.
Rucker, E. P. ..... Welch.
Stokes, W. H. ..... Welch.

**Nicholas County.**

Alderson, John D. ..... Summersville.
Horan, A. J. ..... Summersville.
Horan, T. B. ..... Summersville.

**Ohio County.**

Addleman, R. M. ..... Wheeling.
Allen, G. R. C. ..... Wheeling.
Allison, B. S. ..... Wheeling.
Arbenz, John P. ..... Wheeling.
Boyd, George E. ..... Wheeling.
Caldwell, Alfred ..... Wheeling.
Caldwell, George B. ..... Wheeling.
Caldwell, William G. ..... Wheeling.
Clarke, A. J. ..... Wheeling.
Coniff, John J. ..... Wheeling.
Cox, Frank C. ..... Wheeling.
Dovener, B. B. ..... Wheeling.
Ewing, James W. ..... Wheeling.
Fickeison, A. G. ..... Wheeling.
Flick, C. P. ..... Wheeling.
Garvin, T. M. ..... Wheeling.
Gilchrist, George R. E. ..... Wheeling.
Hearne, William H. ..... Wheeling.
Howard, John A. ..... Wheeling.
Hubbard, Nelson C. ..... Wheeling.
Hubbard, William P. ..... Wheeling.
McMahon, Frank A. ..... Wheeling.
Melvin, Thayer ..... Wheeling.
Meyer, W. C. ..... Wheeling.
Moore, Sheridan ..... Wheeling.
Morris, C. E. ..... Wheeling.
Naylor, Joseph R. ..... Wheeling.
Nesbitt, Frank W. ..... Wheeling.
Reymann, Lawrence A. ..... Wheeling.
Richards, H. C. ..... Wheeling.
Riley, T. S. ..... Wheeling.
Russell, Henry M. ..... Wheeling.
Sawtelle, A. L. ..... Wheeling.
Smith, S. G. ..... Wheeling.
Sommerville, J. B. ..... Wheeling.
Stifel, L. F. ..... Wheeling.
White, Robert ..... Wheeling.
Wingerter, Ferdinand ..... Wheeling.

**Pendleton County.**

Hodges, M. S. ..... Franklin.

**Pleasants County.**

Barron, J. F. ..... St. Marys.
Johnson, Clyde B. ..... St. Marys.
Wells, Ross ..... St. Marys.

**Pocahontas County.**

McClintic, L. M. ..... Marlington.
Price, Andrew ..... Marlington.
Rucker, H. Scott ..... Marlington.

**Preston County.**

Brown, William G., Jr. ..... Kingwood.
Conley, W. G. ..... Kingwood.
Crogan, P. J. ..... Kingwood.
Fortney, Neil J. ..... Kingwood.
McCrum, A. Bliss ..... Kingwood.
Monroe, R. W. ..... Kingwood.

**Raleigh County.**

Preston, A. D. ..... Beckley.

**Randolph County.**

Bowers, E. A. ..... Elkins.
Dailey, C. Wood ..... Elkins.
Strader, J. F. ..... Beverly
Talbott, E. D. ..... Elkins.
Taylor, Blaine W. ..... Elkins.
Wamsley, Jared L. ..... Elkins.
Wilson, W. G. ..... Elkins.

**Ritchie County.**

Freer, Romeo H. ..... Harrisville.
Hoff, S. M. ..... Harrisville.
Showalter, H. C. ..... Harrisville.
Woods, H. B. ..... Harrisville.

**Roane County.**

Chambers, O. J. ..... Spencer.
Pendleton, Walter ..... Spencer.
Vandale, J. A. A. ..... Spencer.

**Summers County.**

Daly, A. D. ..... Hinton.
Dunlap, R. F. ..... Hinton.
Miller, James H. ..... Hinton.
Reed, T. N. ..... Hinton.

**Taylor County.**

Bailey, Benjamin F. ..... Grafton.
Burdette. A. W. ..... Grafton.
Dent, M. H. ..... Grafton.
Dent, W. R. D. ..... Grafton.

Kunst, G. H. A. ..... Grafton.
McGraw, John T. ..... Grafton.
Post, Melville D. ..... Grafton.
Robinson, Ira E. ..... Grafton.

**Tucker County.**

Cunningham, A. M. ..... Davis.
Shirley, George P. ..... Parsons.
Strieby, C. O. ..... Davis.
Valantine, A. J. ..... Parsons.

**Tyler County.**

Blackmarr, F. E. ..... Sistersville.
Hardman, O. W. O. ..... Middlebourne.
Strickling, James H. ..... Sistersville.

**Upshur County.**

Cutwright, W. B. ..... Buckhannon.
Fleming, G. M. ..... Buckhannon.
Higginbotham, C. C. ..... Buckhannon.
McWhorter, J. C. ..... Buckhannon.
Pifer, Felix C. ..... Buckhannon.
Poundstone, A. M. ..... Buckhannon.
Reger, Roy ..... Buckhannon
Young, U. G. ..... Buckhannon

**Webster County.**

Dorr, C. P. ..... Webster Springs.
Hoover, John M. ..... Webster Springs.
Morton, E. H. ..... Webster Springs.
Thurmond H. C. ..... Webster Springs.
Wooddell, W. L. ..... Webster Springs.

**Wetzel County.**

Bowers, Basil T. ..... New Martinsville.
Clark, F. W. ..... New Martinsville.
Cornett, F. C. ..... New Martinsville.
Hall, S. B. ..... New Martinsville.
Hall, Wm. McG. ..... New Martinsville.
Iams, Frank V. ..... New Martinsville.
Jacobs, T. P. ..... New Martinsville.
Robinson, E. L. ..... New Martinsville.

**Wirt County.**

Brown, T. A. ..... Elizabeth.

**Wood County.**

Allen, W. S. ..... Parkersburg.
Ambler, B. M. ..... Parkersburg.
Ambler, Mason G. ..... Parkersburg.
Blizzard, Reese ..... Parkersburg.
Bullock, T. O. ..... Parkersburg.
Camden, H. P. ..... Parkersburg.
Chase, George P. ..... Parkersburg.
Cooper, John T. ..... Parkersburg.
Ireland, A. D. ..... Parkersburg.

Jackson, W. W. ..... Parkersburg.
Johnson, George W. ..... Parkersburg.
Kreps, C. A. ..... Parkersburg.
Laird, John F. ..... Parkersburg.
Leonard, Dan B. ..... Parkersburg.
Merrick, C. D. ..... Parkersburg.
Miller, W. N. ..... Parkersburg.
Moats, F. P. ..... Parkersburg.
Morris, Presley W. ..... Parkersburg.
Moss, Hunter H., Jr. ..... Parkersburg.
McCluer, James S. ..... Parkersburg.
Patton, A. G. ..... Parkersburg.
Peterkin, William G. ..... Parkersburg.
Smith, Charles A. ..... Parkersburg.
Smith, Levin ..... Parkersburg.
Straus, W. M. ..... Parkersburg.
Turner, Smith D. ..... Parkersburg.
Vandervort, J. W. ..... Parkersburg.
Van Winkle, W. W. ..... Parkersburg.
Wolfe, W. H., Jr. ..... Parkersburg.

Cleveland, Ohio,
Westenhaver, D. C.

Columbus, Ohio,
James L. Hamill.

Roanoke, Virginia,
Hunt, A. B.
Staples, Waller R.

Windsor, Nova Scotia,
Hoke, J. T.

Washington, D. C.,
Atkinson, George W., (Court of Claims).
Faulkner, Charles J., (Kellogg Bldg.)
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